

S.J.C. No. DAR-____
App. Ct. No. 21-P-1127

Commonwealth of Massachusetts

Supreme Judicial Court

COMMONWEALTH,
Appellant/Cross-Appellee,

vs.

MELISSA PFEIFFER,
Defendant-Appellee/Cross-Appellant.

ON CROSS-APPEALS FROM AN ORDER OF
THE SUFFOLK COUNTY SUPERIOR COURT

APPLICATION FOR DIRECT APPELLATE REVIEW

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September 23, 2022

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REQUEST FOR DIRECT APPELLATE REVIEW

Pursuant to Mass. R.A.P. II, defendant Melissa Pfeiffer requests that this Court allow direct appellate review of these cross-appeals from the partial allowance of a post-appeal motion for new trial in a murder case. The motion judge (who was also the trial judge) denied so much of the motion as requested a new trial, but allowed Ms. Pfeiffer's alternative request for a reduction of the verdict from felony-murder in the second degree to involuntary manslaughter.

The parties' appeals from the judge's order present several novel or important questions of law, including one recently reserved by this Court in *Commonwealth v. Pope*, 489 Mass. 790, 791 (2022): whether the abrogation of the common-law felony-murder doctrine in *Commonwealth v. Brown*, 477 Mass. 805, 807 (2017), should be applied retroactively to a limited set of cases where the defendant raised the issue prior to the judgment of conviction and the reasons this Court gave in *Brown* for applying the new rule prospectively are not present.

PRIOR PROCEEDINGS

On March 8, 2011, a Suffolk County grand jury returned indictment #11-10211, charging Melissa Pfeiffer with murder in the second degree, G.L. c.265, §1; assault and battery by means of a dangerous weapon causing serious bodily injury, G.L. c.265, §15A; arson of a dwelling house, G.L. c.266, §1; and two counts of injuring a firefighter, G.L. c.265, §13D½. Ms. Pfeiffer was arraigned on March 10, 2011, and pleaded not guilty.

The indictment was tried to a jury (Sanders, J., presiding) beginning on January 28, 2016. After the close of evidence on February 9, the trial judge entered a required finding of not guilty on the assault

and battery charge. The following day, the jury returned verdicts of guilty on the four remaining charges. Ms. Pfeiffer filed a post-verdict motion for required finding of not guilty or for new trial, which was denied at the sentencing hearing on March 21, 2016. The trial judge then sentenced Ms. Pfeiffer to life in prison, with shorter concurrent sentences on the two counts of injuring a firefighter. The arson conviction was dismissed by agreement as duplicative.

This Court allowed direct appellate review of Ms. Pfeiffer's direct appeal on November 15, 2017. On May 1, 2019, the Court issued a divided opinion affirming her convictions. *Commonwealth v. Pfeiffer*, 482 Mass. 110 (2019). Ms. Pfeiffer filed a motion for reconsideration, which was summarily denied on June 7. Ms. Pfeiffer then filed a petition for certiorari in the United States Supreme Court, which was denied on November 12, 2019. *Pfeiffer v. Massachusetts*, 140 S. Ct. 498 (2019).

Ms. Pfeiffer filed a motion for new trial on October 13, 2020, and an amended motion (the operative motion for this appeal) on November 19. The motion was supported by affidavits from both trial and appellate counsel. It requested a new trial based on violations of Ms. Pfeiffer's rights under the United States Constitution, which, she contended, had not been properly presented for this Court's review in the direct appeal due to ineffective assistance of counsel. In the alternative, the motion asserted that Ms. Pfeiffer's "conviction of murder is not consonant with justice" and requested that the trial judge reduce the verdict to involuntary manslaughter. The Commonwealth eventually filed an opposition on July 8, 2021, and the trial judge held a non-evidentiary hearing on the motion on July 27.

On November 29, 2021, the trial judge entered a 19-page memorandum and order denying so much of the motion as requested a new trial, but allowing the request for the verdict to be reduced to involuntary manslaughter. The Commonwealth filed a notice of appeal on December 1, 2021. On December 8, Ms. Pfeiffer filed a notice of cross-appeal as to the portion of the order that denied a new trial. The matter was entered in the Appeals Court on December 15, 2021, as No. 21-P-1127. That court stayed appellate proceedings to permit production of a transcript of the hearing on the motion for new trial.

Following litigation before a single justice of this Court, *see Commonwealth v. Pfeiffer*, No. SJ-2022-27, the matter was set for resentencing. On March 4, 2022, the trial judge imposed a sentence of eight to ten years in state prison (deemed served) on the manslaughter conviction. The judge ordered Ms. Pfeiffer released on conditions during the pendency of the appeal. After further single justice litigation, *see Commonwealth v. Pfeiffer*, No. 22-J-416, that order was effectuated and the stay of appellate proceedings vacated. The Commonwealth's opening brief was filed on September 8, 2022.

STATEMENT OF FACTS

On the evening of December 24, 2010, a fire broke out in the apartment Melissa Pfeiffer shared with her boyfriend William Brewer and their young son. The blaze quickly grew out of control. Ms. Pfeiffer's upstairs neighbor, Crystal Blanchard, was unable to escape the building in time and died from her injuries. In an interview with police less than two weeks later, Ms. Pfeiffer admitted that the fire had started when she tried to burn some of Mr. Brewer's clothing after a fight with him. She was arrested and charged with arson and murder.

Ms. Pfeiffer's defense at trial centered on her mental state when the fire was set. Relying on un rebutted expert testimony, she emphasized her severe post-traumatic stress disorder due to lifelong abuse and neglect, including harrowing physical and sexual abuse by her parents nearly from the moment of her birth. She also stressed her extremely limited intellectual functioning: an overall IQ at the third percentile of all adults, including a score in the *first* percentile on non-verbal reasoning abilities. The expert who administered these tests testified to his opinion that Ms. Pfeiffer's mental illness and borderline intellectual disability would have impaired her ability to "think through and inhibit her behavior," and that she would not have been able to appreciate the likely consequences of her actions the way an ordinary reasonable person could. Defense counsel argued that Ms. Pfeiffer had no conceivable reason to burn down her own home (and every reason not to); that the jury should therefore conclude that she had intended only to burn Mr. Brewer's clothing; and that due to her cognitive limitations she had not appreciated the likelihood that her actions would result in the burning of the dwelling.

This theory of defense, focused on what Ms. Pfeiffer intended and could foresee at the moment she set fire to the clothing, was well calculated to respond to the accusation defense counsel had prepared to defend against: that Ms. Pfeiffer had lit the fire with the *specific intent, at that moment*, that the house be burned. But after the close of evidence the trial judge suggested that the Commonwealth was entitled to an instruction that regardless of her mental state when the fire was lit, Ms. Pfeiffer could be guilty of arson so long as she developed an intent that the dwelling be burned *at some point*, and thereafter

willfully and maliciously failed to extinguish or report the fire. As the judge observed during the charge conference, the record supported a finding that “she might not have intended to ... set the apartment on fire but ... there’s evidence to suggest that, in fact, she was in there long enough to realize that’s exactly what she did[, a]nd then she failed to extinguish it or failed to report it.” The Commonwealth agreed, and the judge gave the instruction over defense objection.

The murder charge was submitted to the jury on two theories: second-degree murder based on “third prong malice” (*i.e.*, an awareness when she lit the fire that her actions presented a plain and strong likelihood of death), and felony-murder (with arson as the predicate felony). The trial judge instructed the jury to deliberate on the malice murder charge first, and then to proceed to the felony-murder theory regardless of their decision on that theory. Ultimately, the jury convicted Ms. Pfeiffer only of felony-murder.

Before sentencing, Ms. Pfeiffer filed a post-verdict motion for a required finding of not guilty or for a new trial, contending that “using a felony murder theory in imposing capital liability in a homicide case of unintended killing is constitutionally impermissible ... and should be abandoned as an element of the common law of Massachusetts.” That motion was denied, and Ms. Pfeiffer timely appealed.

On direct appeal, this Court held that the trial judge’s supplemental arson instruction was error. *Pfeiffer*, 482 Mass. at 124. The arson statute does not criminalize failure to extinguish or report a fire, however malicious that failure may be. *Id.* However, a majority of the Court concluded that the error did not require reversal. *Id.* at 128–129. The Court reached this conclusion in part because the judge had

instructed (as requested by both parties) that arson was a specific intent crime. *See id.* at 130. But this Court held for the first time in Ms. Pfeiffer’s case that arson is actually a general intent crime. *Id.* at 120. Thus, the trial actually “was skewed in favor of the defendant,” and the erroneous arson instructions did not require reversal. *Id.* at 130.

After her convictions were affirmed, Ms. Pfeiffer filed a motion for new trial under Mass. R. Crim. P. 25(b)(2) and 30(b). Among other claims, that motion contended that this Court’s affirmance of her conviction based on a theory of murder that no longer constituted the law of this Commonwealth at the time her conviction became final violated her right to due process of law under the Fourteenth Amendment to the United States Constitution. *But see Commonwealth v. Martin*, 484 Mass. 634, 644–646 (2020) (rejecting such a claim), *cert. denied*, 141 S. Ct. 1519 (2021). In the alternative, the motion requested a reduction in the verdict from second-degree murder to involuntary manslaughter in the interests of justice under rule 25(b)(2).

The trial judge denied Ms. Pfeiffer’s request for a new trial, but allowed the request for a reduction of the verdict. *Post*, at 39. The judge concluded that a verdict of involuntary manslaughter was more consonant with justice for four interrelated reasons. First, “the evidence regarding the defendant’s intent on the arson charge was weak.” *Post*, at 46. Second, “the defendant’s personal characteristics,” *i.e.*, her severe mental illness and borderline intellectual disability, “constitute mitigating circumstances.” Third, while the erroneous jury instruction on the intent element of arson may not have mandated reversal as a matter of law under the “prejudicial error” standard, it further undermined the judge’s confidence in the justice of the verdict given

that it went to the same element as the two foregoing factors. *Post*, at 46. And fourth, “had this trial been held just eighteen months later, the Commonwealth would have been unable to proceed using felony murder as an independent theory of liability for murder.” *Post*, at 46.

The Commonwealth has appealed, contending primarily that the judge was estopped from considering the erroneous jury instructions as a factor in her rule 25 analysis by this Court’s prior conclusion that the instructions did not require a new trial. The Commonwealth’s brief also argues that “Judge Sanders committed an error of law by retroactively applying changes to felony murder jurisprudence that [this] Court expressly made prospective only.”

ISSUE PRESENTED

This application focuses primarily on the Commonwealth’s claim that the trial judge improperly applied *Brown*’s prospective holding retroactively. The Commonwealth argued below that the change in the law of felony-murder was not a proper consideration for the judge on this motion, preserving that claim for appeal.

The case also presents several other questions of law that merit this Court’s review, of which Ms. Pfeiffer here flags one in particular. In recent years this Court has repeatedly confronted the application of principles of estoppel to motions for new trial. *Commonwealth v. Arias*, 488 Mass. 1004, 1007 (2021); *Commonwealth v. Sanchez*, 485 Mass. 491, 498–503 (2020). This case presents a new twist: may a trial judge consider an error that did not *require* reversal as one factor in a holistic analysis of whether justice was done? And in the course of that analysis, may she reach a different conclusion than this Court regarding the strength and weight of evidence she personally saw and heard?

ARGUMENT

This Court’s abrogation of the common-law felony-murder doctrine should apply retroactively to cases where the reasons this Court gave for prospective application lack force and the defendant preserved the issue before the judgment of conviction.

“Murder in the second degree is unlawful killing with malice aforethought.” *Commonwealth v. Hicks*, 356 Mass. 442, 444 (1969), *quoting* *Commonwealth v. Bedrosian*, 247 Mass. 573, 576 (1924). “Without malice, an unlawful killing can be no more than manslaughter.” *Commonwealth v. Judge*, 420 Mass. 433, 437 (1995). The jury in this case were instructed on the element of malice, and did not find that it had been proved beyond a reasonable doubt. Yet Ms. Pfeiffer was convicted of murder in the second degree.

This anomaly arose through “the fiction of constructive malice—that where a killing occurs in the commission of a felony, the intent to commit the felony is sufficient alone to establish malice.” *Commonwealth v. Brown*, 477 Mass. 805, 825 (2017) (Gants, C.J., concurring).^{*} The common-law felony-murder doctrine that embraced this legal fiction was of long standing. But it “was derived from legal principles we no longer accept and contravene[d] two fundamental principles of our criminal jurisprudence.” *Id.* at 836. And it carried the potential to produce convictions of murder (and mandatory life sentences) that were “not consonant with justice.” *Id.* Therefore, in *Brown*, this Court abandoned that legal fiction. Henceforth, “a defendant may not be convicted of murder without proof of one of the three prongs of malice.” *Id.* at 807 (opinion of the Court).

^{*} Chief Justice Gants’s concurrence in *Brown* garnered four votes, and is thus controlling as to the issues it discusses. *See* 477 Mass. at 825.

This case well demonstrates the felony-murder doctrine’s potential to give rise to unjust results. There has never been any allegation that Ms. Pfeiffer meant to hurt or kill anyone. And her severe mental illness and cognitive deficits give rise to serious questions about whether she was even capable of comprehending the possibility that her attempt to burn her boyfriend’s clothes could have such a result, at least at the time she acted. Indeed, on the only charge for which the jury were instructed that her mental state at that moment was determinative—malice murder—no conviction was returned. Her conviction thus “violates the most fundamental principle of the common law—criminal liability for causing a particular result is not justified in the absence of some culpable mental state in respect to that result.” *Brown*, 477 Mass. at 831 (Gants, C.J., concurring), *quoting Commonwealth v. Matchett*, 386 Mass. 492, 506–507 (1982).

The Commonwealth, however, insists that this Court’s reform of the common law to comport with fundamental fairness was not a proper consideration for the motion judge in this case. And its contention finds support in *Brown* itself. That case limited its holding to prospective application only. 477 Mass. at 807 (opinion of the Court).

However, the reasons this Court has given for that limitation lack force here. In *Brown* itself, Chief Justice Gants “recognize[d] that a felony-murder case might have been tried very differently if the prosecutor had known that liability for murder would need to rest on proof of actual malice. For example, a prosecutor might have asked for an involuntary manslaughter instruction if he or she had known that the jury could not rest a finding of murder on felony-murder liability.” *Id.* at 834 (Gants, C.J., concurring). And in *Commonwealth v. Martin*, this

Court noted that it would be “unfair to the Commonwealth” to reverse a conviction based on *Brown* where the Commonwealth chose “to proceed only on one theory of murder in the first degree, felony-murder, which at the time of trial did not require the jury to find one of the three prongs of malice”—especially because, if the question had been put to them, the jury in that case “likely would have found that the defendant acted with malice in shooting the victim.” 484 Mass. 634, 645–646 (2020).

But here, the Commonwealth forcefully urged the jury to conclude that Ms. Pfeiffer acted with malice, and the jury declined to do so. Moreover, the jury *were* presented with an involuntary manslaughter instruction, and the judge’s resolution of this motion was not to grant a new trial but to reduce the verdict to that offense, which she concluded was more consistent with the weight of the evidence at trial and more consonant with justice. This makes good sense. Ms. Pfeiffer’s failure to take action to mitigate the danger she had caused after the fire spread to the house, though it could not constitute arson, *see Pfeiffer*, 482 Mass. at 125, was strong evidence of manslaughter. *See Commonwealth v. Levesque*, 436 Mass. 443, 450 (2002) (“Where a defendant’s failure to exercise reasonable care to prevent the risk he created is reckless and results in death, the defendant can be convicted of involuntary manslaughter”).

As the trial judge recognized, rather than being unfair to the Commonwealth to vacate the murder conviction, it actually would be unfair to Ms. Pfeiffer to allow that conviction to stand. This is especially true where Ms. Pfeiffer raised this issue prior to the judgment in this case. In her post-verdict motion for a required finding of not

guilty or a new trial, Ms. Pfeiffer specifically argued that “this case well illustrates why using a felony murder theory in imposing capital liability in a homicide case of unintended killing is constitutionally impermissible ... and should be abandoned as an element of the common law of Massachusetts.” The motion also argued that “the uncontroverted nature of the defendant’s cognitive and other limitations implicate the numerous other academic and other writings attacking the application of the felony murder rule to juvenile offenders.” *See, e.g., Flynn, Dismantling the Felony Murder Rule: Juvenile Deterrence and Retribution Post Roper v. Simmons*, 156 U. Penn. L. Rev. 1049 (2008).

There is a final reason particular to this case why a limited exception to *Brown’s* prospective nature is justified. As noted above, this Court’s analysis of the prejudicial effect of the erroneous jury instructions at Ms. Pfeiffer’s trial rested heavily on its determination that arson should be considered a general intent crime, and that the submission of the case to the jury on a specific intent basis resulted in a trial that was “skewed in favor of the defendant.” *Pfeiffer*, 482 Mass. at 130. But both parties agreed throughout the entire pendency of this case that a conviction of arson required specific intent. And there was ample basis for that belief in the caselaw that existed at the time of trial. *See, e.g., Commonwealth v. Dung Van Tran*, 463 Mass. 8, 27 & n.21 (2012) (quoting with apparent approval trial judge’s instruction requiring jury to find “that the defendant intended not only his conduct, *i.e.*, lighting the fire, but also the ‘resulting harm, which in this case’ was the burning of the apartment”); *Commonwealth v. Schuchardt*, 408 Mass. 347, 352 (1990) (“Conduct is willful when the actor intends both the conduct and its harmful consequences”).

By the time this Court reached out to decide, *sua sponte*, in Ms. Pfeiffer’s appeal, that arson does not require proof of specific intent, the crime of second-degree felony-murder had been defunct for almost two years. See *Pfeiffer*, 482 Mass. at 115 (acknowledging that as of May 2019, “we have not had occasion to address squarely whether G.L. c.266, §1, requires proof of specific intent”); *Brown*, 477 Mass. at 832 n.4 (Gants, C.J., concurring) (noting that the Court’s holding in September 2017 would “entirely eliminate the concept of ‘felony-murder in the second degree’”). In other words, *at no time* could Ms. Pfeiffer have been tried on a theory of second-degree felony-murder based on a predicate felony of arson with general intent. As the judge recognized, it would be fundamentally unfair to uphold Ms. Pfeiffer’s conviction based on this Court’s late-breaking change to the law of arson while ignoring the intervening developments in the law of felony-murder.

CONCLUSION

Although this Court held that the erroneous jury instructions on the elements of arson did not require Ms. Pfeiffer’s conviction to be reversed, the judge who saw and heard the evidence at trial subsequently concluded that a murder conviction was not consonant with justice. Ms. Pfeiffer contends that this conclusion was well within the judge’s broad discretion under rule 25 even without regard to her consideration of the intervening abolition of the crime of which Ms. Pfeiffer had been convicted. But there is some force to the Commonwealth’s argument that such consideration was at least in tension with this Court’s decision to apply its holding in *Brown* prospectively. Should the Appeals Court agree and reverse, the result would be reinstatement of a conviction that the trial judge concluded was

fundamentally unjust. Moreover, that unjust conviction would be entirely unavailable to the Commonwealth were the case tried today, due to this Court's abolition of the ancient felony-murder doctrine *for the very reason* that it could produce such unjust convictions.

This case thus presents “novel questions of law ... of such public interest that justice requires a final determination” by this Court. Mass. R.A.P. 11(a). Indeed, *only* this Court is empowered to make a limited exception to *Brown's* rule of prospective application. Justice requires such an exception to be made in this case. This Court should allow direct appellate review and affirm the order reducing the verdict from murder to involuntary manslaughter.

Respectfully submitted,

MELISSA PFEIFFER

By her attorney,

/s/ Patrick Levin

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September 23, 2022

1184CR10211 Commonwealth vs. Pfeiffer, Melissa

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 03/08/2011
- DCM Track:
- C - Most Complex
- Initiating Action:
- MURDER c265 §1
- Status Date:
- 03/08/2011
- Case Judge:
-
- Next Event:
-

[All Information](#)
[Party](#)
[Charge](#)
[Event](#)
[Tickler](#)
[Docket](#)
[Disposition](#)

Docket Information

<u>Docket Date</u>	<i>Docket Text</i>	<u>File Ref Nbr.</u>	<i>Image Avail.</i>
03/08/2011	Indictment returned as to offense #001 - Murder, 2nd Degree	1	Image
03/08/2011	MOTION by Commonwealth for arrest warrant to issue; filed & allowed. McIntyre, J.	2	
03/08/2011	Warrant on indictment issued		
03/08/2011	Warrant was entered onto the Warrant Management System 3/8/2011		
03/08/2011	Order of notice of finding of murder indictment		
03/10/2011	Defendant brought into court. Warrant Recalled.		
03/10/2011	Order of notice of finding of murder indictment with return of service.	3	
03/10/2011	Deft arraigned before Court. Indictment Read as to Offense #001.		
03/10/2011	RE Offense 1:Plea of not guilty		
03/10/2011	Deft waives reading of indictment as to Offenses #002-005.		
03/10/2011	RE Offense 2:Plea of not guilty		
03/10/2011	RE Offense 3:Plea of not guilty		
03/10/2011	RE Offense 4:Plea of not guilty		
03/10/2011	RE Offense 5:Plea of not guilty		
03/10/2011	Bail set: \$1,000,000.00 Surety or \$100,000.00 Cash w/o/p. Bail warning read. Mittimus issued.		
03/10/2011	Assigned to track "C" see scheduling order		
03/10/2011	Tracking deadlines Active since return date		
03/10/2011	Case Tracking scheduling order (Gary D Wilson, Magistrate) mailed 3/10/2011		
03/10/2011	Continued to 5/10/2011 for hearing on PTC		
03/10/2011	Continued to 9/20/2011 for hearing on PTH		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/10/2011	Continued to 2/9/2012 for hearing on FPTH		
03/10/2011	Continued to 3/5/2012 for hearing on PTD		
03/10/2011	Commonwealth files notice of appearance.	4	
03/10/2011	Commonwealth files notice of discovery.	5	
03/10/2011	Commonwealth files motion for funds	6	
03/10/2011	MOTION (P#6) allowed (Gary D Wilson, Magistrate) - J. Higgins, ADA - ERD/JAVS - J. Doyle, Attorney		
03/10/2011	Warrant canceled on the Warrant Management System 3/10/2011		
04/13/2011	Defendant files: Opposition to the Commonwealth's Motion for a Protective Order	7	
04/13/2011	Defendant files: Motion for Summons with Affidavit of Counsel	8	
04/14/2011	Defendant brought into court - PTC held. Memo to be filed.		
04/14/2011	Commonwealth files First Notice of Discovery	9	
04/14/2011	Commonwealth files Second Notice of Discovery	10	
04/14/2011	Commonwealth files Third Notice of Discovery	11	
04/14/2011	Commonwealth files Motion for a Protective Order	12	
04/14/2011	After hearing, MOTION (P#12) denied. Gaziano, RAJ		
04/14/2011	After hearing, MOTION (P#8) allowed as LAMPRON has been satisfied: Summons to issue with return date of 06/09/2011. Commonwealth to notify DCF.		
04/14/2011	Continued to 6/9/2011 by agreement for Dwyer hearing and filing of PTC report. Gaziano, RAJ - J. Higgins, ADA - N. King, Court Reporter - R. Doyle, Attorney		
04/25/2011	(Dwyer) Notice and Summons issued on 4/25/2011 to the Keeper of the Records of Department of Children and Families to produce records by 6/9/2011 to the Clerk of the Superior Court		
06/09/2011	Defendant not in court.		
06/09/2011	Hearing on DCF records held before Gaziano, RAJ. After hearing, the Court orders a new subpoena to issue with return date of July 29, 2011.		
06/09/2011	Commonwealth files: Response to the Defendant's Motion for the Defendant's DCF Records	13	
06/09/2011	Commonwealth files: Sixth Notice of Discovery	14	
06/09/2011	Continued to 8/16/11 by agreement for Status re: DCF records. Gaziano, RAJ - J. Higgins, ADA - J. Doyle, Atty - N. King, CR.		
06/10/2011	(Dwyer) Notice and Summons issued on 6/10/2011 to the Keeper of the Records of Department of Children and Families to produce records by 7/29/2011 to the Clerk of the Superior Court		
06/29/2011	Defendant's Ex Parte Motion for Funds filed.	15	
07/25/2011	The Court, Kottmyer, J. allows Paper #15 not to exceed \$2,500.00. Kottmyer, J. (Copy sent).		
07/28/2011	(Dwyer) Department of Children and Families received		
08/23/2011	Defendant not present - hearing on DCF records held before Kottmyer, J.		
08/23/2011	ORDER to Disclose, filed. Kottmyer, J.	16	
08/23/2011	Protective Order issued for defense counsel, filed.	17	
08/23/2011	Commonwealth files Seventh Notice of Discovery	18	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/23/2011	Continued to 9/29/2011 by agreement for status re: DCF records. (Cancel 9/20/11 PTH) Kottmyer, J - J. Higgins, ADA - D. Cercone, Court Reporter - J. Doyle, Attorney		
08/31/2011	Defendant's Motion for Leave to File Request for an Order for Production of Records filed.	19	
09/07/2011	The Court, Kottmyer, J. allows Paper #19. See Order. (Parties notified with copy of Order).		
09/07/2011	Order on Defendant's Motion for Leave to File a Request for an Order for Production of Records filed by the Court, Kottmyer, J. (Parties along with attorney for DCF notified with copy).	20	
10/05/2011	Commonwealth files: Statement of the Case	21	
10/11/2011	Commonwealth files eighth notice of discovery	22	
10/11/2011	Continued to 11/8/2011 for hearing on discovery #906 (Frank M. Gaziano, Justice) J.Higgins,ADA; N.King,Court reporter		
10/12/2011	Records from Salem District Court Received. DWYER.		
10/31/2011	Salem District Court records mailed to Attorney Judith Morrison at DCF pursuant to Judge Kottmyer's Order. See Paper #20.		
11/08/2011	Defendant not present. Status Conference re: Records Held before Gaziano, RAJ.		
11/08/2011	Continued to 12/8/2011 for hearing on status re: redacted records from DCF. (Frank M. Gaziano, Regional Administrative Justice) - J. Higgins, ADA - N. King, Court Reporter - J. Doyle, Attorney		
11/14/2011	Other records from DCF received (Dwyer Room - unredacted - no view)		
11/16/2011	Protective Order issued for defense counsel access to presumptively privileged records. Salem District Court records redacted by DCF. Attorney for defendant may view records. Judge Gaziano permits one copy given to Attorney Doyle. (Delivered in hand).	23	
12/22/2011	Defendant not present. Status Conference held before Gaziano, RAJ.		
12/22/2011	Continued to 3/6/2012 for hearing on DCF Records and Discovery Compliance. Rule 17 Motion to be filed by 1/24/12. (Frank M. Gaziano, Regional Administrative Justice) - J. Higgins, ADA - N. King, Court Reporter - J. Doyle, Attorney		
01/24/2012	Defendant's Renewed Motion for Summons with Affidavit of Counsel filed.	24	
02/10/2012	The Court, Locke, RAJ. allows Paper #24 as endorsed. Subpoena to issue with return date of 3/6/12. Locke, RAJ.		
02/13/2012	(Dwyer) Notice and Summons issued on 2/13/2012 to the Keeper of the Records of Department of Children and Families to produce records by 3/5/2012 to the Clerk of the Superior Court	25	
03/06/2012	Records from Department of Children and Families received (Dwyer)		
03/06/2012	Defendant not present .		
03/06/2012	Commonwealth files 10 th notice of discovery . Continued to 4/5/12 at 2:00pm for status by agreement. Locke, RAJ - J. Higgins, ADA - N. King, CR - J. Doyle, ATTY	26	
04/03/2012	Commonwealth files Eleventh Notice of Discovery	27	
04/05/2012	Defendant not present		
04/05/2012	Deft files Motion to Clarify and Amend Protective Order	28	
04/05/2012	Hearing re: P#28 held before Locke, RAJ. After hearing the Court orders Attorney Doyle may release his client's birth name to her.		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
04/05/2012	Protective Order issued for defense counsel, filed. The Court orders Attorney Doyle may view records. The Commonwealth may view records if defense counsel does not object and if a protective order is executed.	29	
04/05/2012	Continued to 5/1/2012 by agreement for filing of further Dwyer motions and any motions to dismiss. Locke, RAJ - J. Higgins, ADA - N. King, Court Reporter - J. Doyle, Attorney		
05/01/2012	Defendant not present. Hearing on paper #32 held before Locke, RAJ.		
05/01/2012	Deft files: Motion to dismiss indictments.	30	
05/01/2012	Deft files: Motion to suppress statements with affidavit and authorities.	31	
05/01/2012	Commonwealth files: Twelfth notice of discovery.	33	
05/01/2012	Deft files: Motion to amend protective orders.	32	
05/01/2012	After hearing MOTION (P#32) allowed as endorsed (Locke, RAJ). Copy of endorsement and record mailed to Atty 5/1/2012.		
05/01/2012	Continued to 6/14/2012 by agreement for hearing re: scheduling of motions to dismiss and suppress. (Locke, RAJ) - J. J. Higgins, ADA - N. King, Court Reporter - J. Doyle, Attorney		
06/22/2012	Evaluation report filed by Taunton State Hospital. (Special File).		
06/25/2012	Defendant not present		
06/25/2012	Request for Commitment of a Female Detainer for Observation Pursuant to M.G.L. Chapter 123, S. 18A, filed and allowed. Ball, J	34	
06/25/2012	ORDER of Committment of a Female Detainee for Observation, filed. Ball, J	35	
06/25/2012	ORDERED: Deft committed per 123:18 to the Taunton State Hospital for a period not to exceed thirty (30) days. Commitment expires on 7/25/12. Ball, J		
07/10/2012	Defendant not present, continued by agreement until 8/16/2012 for Status. Connors, J. - J. Higgins, ADA - J. Doyle, Attorney - F. Leroux, Court Reporter.		
07/30/2012	Evaluation per MGL Ch. 123, Section 18(a) by Dr. Sarah Beszterczy, Ph.D. of Taunton State Hospital received and placed in special file.	37	
08/16/2012	Defendant present, brought in court. Status conference held before Connors, J. Case continued until 8/30/2012 by agreement for status re: testing. Connors, J - J. Higgins, ADA - R. LeRoux, Court Reporter - J. Doyle, Attorney		
10/30/2012	Defendant not present. Status conference held before Locke, RAJ		
10/30/2012	Deft files Notice of Intent to Introduce Evidence of Mental Condition.	38	
10/30/2012	Continued to 12/4/2012 by agreement for status re: defense expert evaluation and status re: Commonwealth's expert. Locke, RAJ - J. Higgins, ADA - N. King, Court Reporter - J. Doyle, Attorney		
11/14/2012	Defendant's Motion for Summons with Affidavit of Counsel filed and allowed. Subpoena to issue. Return date 11/30/12. Locke, RAJ.	39	
11/16/2012	Defendant not present		
11/16/2012	Evaluation report filed by Tae Woo Park, MD from the Suffolk County House of Correction at South Bay	40	
11/16/2012	Request for commitment of female detainee for observation pursuant to MGL CH. 123, Sec.18(a), filed.	41	
11/16/2012	MOTION (P#41) allowed. Ball, J		
11/16/2012	ORDERED: Deft committed per 123:18(a), filed. Ball, J	42	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
11/21/2012	(Dwyer) Notice and Summons issued on 11/21/2012 to the Keeper of the Records of Taunton State Hospital to produce records by 11/30/2012 to the Clerk of the Superior Court	43	
11/29/2012	Hospital records from Taunton State Hospital received		
12/17/2012	Defendant not present. Habe issued but deft not medically cleared to travel. Status conference held before Locke, RAJ. Case continued to 1/22/13 by agreement for filing amended motion to dismiss and Commonwealth's motion for independent mental health evaluation. Locke, RAJ- J. Higgins, ADA - N. King, Court Reporter - J. Doyle, Attorney		
12/20/2012	ORDER of Commitment of a Female Detainee for Observation (pursuant to M.G.L. Chapter 123, Section 18), filed. Ball, J (faxed to Dept of Correction at South Bay)	44	
12/20/2012	Evaluation report filed by Sara K. Bexzterczey, Ph.D. (Special File)	45	
02/14/2013	Defendant not in Court		
02/14/2013	Commonwealth's motion for the defendant to submit to an examination by an independent evaluator filed and allowed after hearing Locke, J	46	
02/14/2013	Commonwealth's Opposition to defendant's amended motion to dismiss indictment filed and (IMPOUNDED) Locke, J	47	
02/14/2013	Case continued by agreement to 3/12/13 for a hearing Re: Motion to Dismiss (Crm 713) and continued by agreement to 3/12/13 for a hearing Re: Mental health status (Ctrm 906 at 2:00 pm) (Habe Issued to S. Bay). Locke, RAJ., J. Higgins, ADA., J. Doyle, Atty., N. King, Court Reporter		
03/12/2013	Tracking deadlines Extended by Bishop/Fuller/Dwyer		
03/12/2013	Defendant brought into court		
03/12/2013	Commonwealth files Notice of Independent Evaluator	48	
03/12/2013	Hearing on motion to dismiss held before Locke, RAJ, matter taken under advisement		
03/12/2013	Scheduling conference held. Continued to 9/10/2013 by agreement for FPTC and 9/23/13 for trial. Continued to 7/9/13 at 9:00 AM by agreement for hearing on motion to suppress in the 9th Criminal Session (Ctrm 713) Locke, RAJ - J. Higgins, ADA - N. King, Court Reporter - J. Doyle, Attorney		
03/12/2013	Defendant's Amended Motion to Dismiss Indictment filed.	49	
03/12/2013	Defendant's Reply Memorandum of Points and Authorities in Support of Amended Motion to Dismiss Indictments filed.	50	
05/23/2013	Memorandum of Decision and Order on Defendant's Motion to Dismiss filed by the Court, Locke, RAJ denying defendant's motion. (Parties notified with copy).	51	
05/31/2013	Defendant's Ex Parte Motion for Further Funds for Mental Health Services filed and allowed. Ball, J. (Copy given in hand to attorney).	52	
06/19/2013	Defendnt's Ex Parte Motion to Substitute Provider of Mental Health Expert Services Nunc Pro Tunc filed.	53	
06/20/2013	Defendant not present. Defendant's presence waived		
06/20/2013	Case continued by agreement to 7/18/13 at 2:00 for a status hearing Re: Trial date of 10/23/13 that is tentatively scheduled. Case also scheduled by agreement to 8/7/13 for a hearing Re: Motion to Suppress in the 9th Criminal Session (Full day hearing). Kottmyer, J., J. Higgins and T. Anderson, ADA's., J. Doyle, Atty., W. Greenlaw, Court Reporter		
07/25/2013	Commonwealth files: Motion for Continuance of October 23, 2013 Trial Date	54	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/06/2013	Defendant not present - presence waived. Status conference re: records held before Connors, J.		
08/06/2013	Hearing held on P#54. After hearing, MOTION (P#54) allowed. Connors, J.		
08/06/2013	Continued to 8/29/2013 by agreement for status re: records. (Presence waived) (Cancel 10/23/13 trial date) Connors, J - J. Higgins, ADA - E. Tyler, Court Reporter - J. Doyle, Atty.		
08/27/2013	Judgment filed by the Court, Duffly, J. denying defendnat's petition.	55	
08/29/2013	Defendant not present. Presence Waived. Status conference held before Connors, J.		
08/29/2013	Case continued to 10/10/2013 by agreement for status re: Dr. Fife's evaluation. Presence Waived. Connors, J - J. Higgins, ADA - ERD - J. Doyle, Attorney		
09/03/2013	Notice of assembly of the record on Appeal received from the SJC.	56	
09/03/2013	Notice received from the SJC (see endorsed motion)	57	
11/26/2013	Defendant not present, Presence waived, Status conference held before Locke, RAJ, continued by agreement until 1/14/2014 @ 2:00pm for status re: Dr. Fife's evaluation. Locke, J - J. Higgins, ADA - N. King, CR - J. Doyle, Attorney.		
01/17/2014	Judgment After Rescript filed by the Court, Cordy, J. of the SJC. Judgment affirmed.	58	
01/23/2014	Defendant not present - presence waived. Status conference re: records held before Kottmyer, J. Continued to 2/13/2014 by agreement at 2:00pm for status re: report of Dr. Fife. Rule 36 waived. Presence waived. Kottmyer, J. - J. Higgins, ADA - T. Anderson, ADA - J. Doyle, Attorney - N. King, Court Reporter		
02/11/2014	Psychiatric records from Pshcyiatric evaluation report from Alison Fife, M. D. received (In special file)		
03/11/2014	Defendant not present - scheduling conference held before Kottmyer, J.		
03/11/2014	By agreement, the following dates were scheduled: 4/29/2014 and 5/6/2014 for motion to supress hearings in the 9th Criminal Session (Ctrm 713) 10/09/2014 for FPTC and 10/20/2014 for PTD in the 6th Criminal Session (Ctrm 906). Kottmyer, J - J. Higgins, ADA - N. King, Court Reporter - J. Doyle, Atty		
06/03/2014	Defendant not in Court. Presence waived, Status Conference held.		
06/03/2014	Defendant files Ex Parte Motion for Further Funds for Mental Health Expert Services.	59	
06/03/2014	MOTION (P#59) allowed (Jeffrey A. Locke, Justice). (Copy given to Counsel in hand).		
06/03/2014	Commonwealth files Motion for unredacted copies of the Defendant's Mental Health Evaluation. ORDERED SEALED as Endorsed Locke-RAJ.	60	
06/03/2014	Continued until 7/1/2014 by agreement; Status Conference (Ctrm 906, 2:00pm presence waived).		
06/03/2014	Continued until 8/6/2014 by agreement Hearing; re: Motion to Suppress. (Ctrm 713, Process needed for Defendant) (Paper #60 Needed for Hearing) (Est. 1/2 to 1 Full Day hearing). Locke-RAJ, J. Higgins, ADA. - J. Doyle, Atty. - N. King, CR.		
07/01/2014	Defendant not in Court, Presence Waived. Status Conference held before Locke-RAJ.		
07/01/2014	Commonwealth files Motion for Additional Examination of the Defendant.	61	
07/01/2014	Continued until 7/2/2014 by Order of the Court; re: Status Conference (Ctrm 906, Presence Waived). Locke-RAJ. - J. Higgins, ADA. - T. Anderson, ADA. - N. King, CR.		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/02/2014	Defendant not in Court; re: Status Conference held before Locke-RAJ.		
07/02/2014	Defendant files Opposition to Commonwealth's Motion for Additional Examination of the Defendant and Request for Evidentiary hearing.	62	
07/02/2014	Defendant files Motion for Funds for Transcript.	63	
07/02/2014	After hearing: MOTION (P#63) allowed (Jeffrey A. Locke, Justice). (Copy given to Counsel this day in-hand)		
07/02/2014	Continued until 7/8/2014 by agreement; Further Hearing re: Motion (P#61) (Ctrm 906 @ 2:00pm). Habe Issued to South Bay. Locke-RAJ. - J. Higgins, ADA. - T. Anderson, ADA. - J. Doyle, Atty. - N. King, CR.		
07/08/2014	Defendant brought into Court, hrg re: Motions held before Connors J.		
07/08/2014	After hrg, Commonwealth's Motion (P#61) taken under advisement - Connors, J.		
07/08/2014	Continued by agreement to 8/7/14 for status conference (Ctrm 906) 2PM - Locke, RAJ - J.Higgins, ADA - F.LeRoux, CR - J.Doyle, Atty		
07/11/2014	Ruling of Connors, J. Denying Commonwealth's Motion for additional examination of the defendant. (ADA's J.Higgins, T.Anderson and Atty J.Doyle notified with copy of Ruling)	64	
07/11/2014	Commonwealth's MOTION (P#61) denied (Thomas A. Connors, Justice).		
08/06/2014	Defendant not present, event not held. (ADA on trial this day)		
08/06/2014	Continued to 8/19/2014 by agreement for hearing status re: scheduling of motion to suppress in (Ctrm.906 at 2:00PM - Deft presence waived) DATE Cancelled for 8/7/14 event in 906. Connors, J. - J. Doyle, Attorney (Thomas A. Connors, Justice)		
08/19/2014	Defendant not in court, Presence waived this day, status conference re: scheduling held before Connors, J.		
08/19/2014	Case continued until 9/25/2014 by agreement for status conference (906, 2pm, Deft excused).		
08/19/2014	Case continued until 10/30/14 by agreement for hearing re: Motion to Suppress in the 9th criminal session ctm 713(Est. 1/2 Day Hearing). Habe needed to South Bay		
08/19/2014	10/9/14 FPTH and 10/20/14 Trial are cancelled. Connors, J. - J. Higgins, ADA. - J. Doyle, Atty. - P. Pietrilla, C.R.		
09/25/2014	Defendant not present, presence waived, status conference held before Connors, J.		
09/25/2014	Case continued until 10/16/2014 for status re expert's report(906, 2pm, deft excused).		
09/25/2014	Case continued until 12/2/2014 by agreement for hearing re status re trial date. Connors, J. - J. Higgins, ADA. - J. Doyle, Atty. - P. Pietrilla, C.R.		
10/16/2014	Defendnat not present in Court. Presence waived.		
10/16/2014	Deft files Report to Court regarding Mental Health Evaluation	64.1	
10/16/2014	Deft files Report of Dr. Alison Fife and Dr. Frank Cataldo (REDACTED) (filed under seal)	64.2	
10/16/2014	Deft files Report of Dr. Alison Fife and Dr. Frank Cataldo (UNREDACTED) (filed under seal)	64.3	
10/16/2014	Case continued to previously scheduled date for motion to suppress on 10/30/2014. - Locke, RAJ - ADA J. Higgins/T. Anderson -- Atty J. Doyle - Pietrilla, CR		
10/21/2014	Deft files Ex Parte Motion for Funds For Forensic Science Consultant	65	
10/27/2014	Commonwealth files Opposition to Defendant's Motion to Suppress Statements.	66	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
10/27/2014	Deft files Opposition to Commonwealth's Motion for Unredacted Copies of the Defendant's Forensic Mental Health Evaluations.	67	
10/30/2014	Defendant brought into court.		
10/30/2014	Commonwealth files Request for Production of Raw Data to be Provided to Dr. Jamie Krauss.	68	
10/30/2014	Continued by agreement to 12/16/2014 for Further hearing on Motion to Suppress. Ames, J. - J. Higgins and T. Anderson ADA - J. Doyle, Attorney.		
11/04/2014	Order :P Defendant to Provide to Dr. Jamie Krauss Raw Data From Dr. Frank DiCataldo's Assessment of the Defendant.	69	
12/16/2014	Defendant not present, continued by Order of the Court until 1/14/2015 for Status Before Ames, J. Courtroom 1006. Ames, J. - J. Higgins, ADA - Javs.		
12/29/2014	MOTION for Unredacted Copies of the Defendant's Forensic Mental Health Evaluation (P#60) denied Without Prejudice as endorsed. Ames, J. Copies mailed to both parties 12/30/14.		
01/14/2015	Defendant not present		
01/14/2015	Case continued until 2/2/2015 by order of court for hearing at 2pm in Room 1006 before Ames, J.		
01/14/2015	Commonwealth files Motion for court to reconsider Comm's motion for unredacted copies of the Deft's forensic mental health evaluations. Lauriat, J. - J. Higgin, ADA. - J. Doyle, Atty. - JAVS.	70	
05/15/2015	Defendant not present		
05/15/2015	After hearing, MOTION to reconsider (P#70) denied as endorsed.		
05/15/2015	Continued by agreement to 6/25/2015 for Further hearing on Motion to Suppress. Ames, J. - J. Higgins and T. Anderson, ADA - J. Doyle, Attorney - Javs.		
05/26/2015	Deft files Motion to File Under Seal Ex-Parte Motion for Funds Forensic Arson Consultant.	71	
05/26/2015	Deft files Ex-Parte Motion for Funds Forensic Arson Consultant.	72	
06/24/2015	Deft files Motion for Bill of Particulars.	73	
06/24/2015	Deft files Motion for Discovery of Exculpatory Evidence.	74	
06/25/2015	Defendant not present. Attorney James Doyle represents to the Court he will not be calling witness Dr. DiCataldo. Motion to Suppress taken under advisement.		
06/25/2015	Continued by agreement to 6/7/2015 for Trial Assignment Sixth Session Courtroom 906. Ames, J. - J. Higgins, ADA - J. Doyle via telephone, Attorney.		
07/02/2015	Deft files motion in limine to exclude invalid " Scientific" Evidence: Arson	75	
07/07/2015	Defendant brought into court. Trial assignment held before Lauriat, J		
07/07/2015	MOTION (P#65) allowed as endorsed, Lauriat J. (copy sent to Atty. J. Doyle via email)		
07/07/2015	Continued to 10/13/2015 by agreement for FPTC @2PM (Ctrm 906) (Habe to S. Bay needed) Lauriat, J - J. Higgins, ADA - J. Doyle, Atty - C. Sproul , CR		
07/07/2015	Continued to 11/ 5/2015 by agreement re: Trial (Habe to S. Bay needed) (Ctrm 906) Lauriat, J - J. Higgins, ADA - J. Doyle, Atty - C. Sproul , CR		
07/07/2015	Continued to 7/23/2015 by agreement @2Pm for Status Conference (Ctrm 906) Habe to issue to South Bay for 7/23/15 event. Lauriat, J - J. Higgins, ADA - J. Doyle, Atty - C. Sproul, CR		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/23/2015	Defendant not present, present in lockup, presence waived in courtroom		
07/23/2015	Continued to 8/13/2015 by agreement re further status. (906, 2pm, habe issued) Lauriat, J. - J. Higgins, ADA. - J. Doyle, Atty. - N. King, CR		
08/10/2015	Defendant files Motion for Summons.	76	
08/13/2015	Defendant brought into court, status held before Lauriat, J		
08/13/2015	MOTION (P#76) allowed Lauriat, J. Summons to issue, returnable on 9-2-15		
08/13/2015	Deft files Motion for summons	77	
08/13/2015	MOTION (P#76) allowed Lauriat, J. Summons to issue, returnable on 9-2-15		
08/13/2015	Continued to 9/3/2015 by agreement re status(906, 2pm, habe issued). Lauriat, J. - J. Higgins, ADA. - J. Doyle, Atty. - N. King, CR.		
08/18/2015	Summons Issued for Records to Suffolk County Sheriff's Department and Malcolm Rogers, M.D., returnable by 09/02/2015.		
08/21/2015	Deft files Notice re: Intervening Authority: Comm v Pfeiffer, SUCR2011-10211 (Copy forwarded to Justice Ames at the request of deft)	78	
08/26/2015	Deft files Ex Parte motion for further funds for Investigative services	79	
09/03/2015	Defendant brought into court .Status conference held before Lauriat,J		
09/03/2015	Deft files Motion regarding interference with witness access	80	
09/03/2015	MOTION (P#79) allowed as endorsed. Lauriat, J (Copy forwarded to Atty Doyle via email)		
09/03/2015	Continued to 10/1/2015 by agreement status re records/deft's motion for bill of particulars(906, 2pm). Counsel for Sheriffs Dept to appear. Habe issued. Lauriat, J. - J. Higgins, ADA. - J. Doyle, Atty. - JAVS.		
09/14/2015	Other records from Suffolk County Sheriff's Department received		
09/22/2015	Suffolk County Sheriff's Department opposition to Deft's Motion for Summons Pursuant to Mass R Crim P. 17	81	
10/01/2015	Event Result: The following event: Hearing scheduled for 10/01/2015 02:00 PM has been resulted as follows: Result: Held Reason: Request of Commonwealth. Continued to 10-6-15 re status Lauriat, J.		
10/05/2015	MEMORANDUM & ORDER: of Ames, J. dated 9/30/15 on deft's motion to suppress statements filed. ADA J. Higgins and Atty. J. Doyle notified 10/5/15 via email.	82	
10/06/2015	Event Result: The following event: Conference to Review Status scheduled for 10/06/2015 02:00 PM has been resulted as follows: Result: Held as Scheduled. COntinued to 10/13/15. N. King, CR		
10/06/2015	Defendant 's Motion for discovery expert evidence	83	
10/06/2015	Defendant 's EX PARTE Motion for further funds	84	
10/06/2015	Endorsement on Motion for Further funds, (#84.0): ALLOWED as endorsed. Locke, RAJ. Sealed. (Copy given to Atty Doyle via email)		
10/06/2015	Habeas Corpus for defendant issued to Suffolk House of Correction (South Bay) returnable for 10/13/2015 02:00 PM Final Pre-Trial Conference.		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
10/09/2015	The following form was generated: Copy of P# 82 and Endorsement on P# 31 sent to parties with Notice A Clerk's Notice was generated and sent to: Attorney: James M Doyle, Esq. Attorney: Julie Sunkle Higgins, Esq.		
10/13/2015	Defendant 's Motion in limine for Judicial Notice of Authoritative learned treatise filed	85	
10/13/2015	Event Result: The following event: Conference to Review Status scheduled for 10/13/2015 02:00 PM has been resulted as follows: Result: Held as Scheduled		
10/13/2015	General correspondence regarding Defendant Motion for Bill of Particulars (P#73) see endorsment of Locke, RAJ	0	
10/13/2015	General correspondence regarding Defendant's Motion (P#74) Moot as endorsed Locke, RAJ		
10/13/2015	General correspondence regarding Defendant's Motion (P#80) see endorsement of Locke, RAJ		
10/13/2015	Endorsement on Motion for Discovery: Expert Evidence, (#83.0): ALLOWED		
10/13/2015	Commonwealth 's Motion to continue November 5,2015 Trial Date, filed	86	
10/13/2015	Endorsement on Motion to continue November 5, 2015 Trial Date (Trial 1/28/16)(FPTC 1/14/16) Locke, RAJ, (#87.0): ALLOWED		
10/13/2015	Event Result: The following event: Jury Trial scheduled for 11/05/2015 09:00 AM has been resulted as follows: Result: Canceled Reason: Court Order		
10/13/2015	Habeas Corpus for defendant issued to Suffolk House of Correction (South Bay) returnable for 01/14/2016 02:00 PM Final Pre-Trial Conference.		
10/13/2015	Habeas Corpus for defendant issued to Suffolk House of Correction (South Bay) returnable for 01/28/2016 09:00 AM Jury Trial. Applies To: Suffolk House of Correction (South Bay) (Holding Institution)		
11/12/2015	Defendant not in court - excused. Status conference held Case has date of 1/14/16 Final Pre Trial Conference Locke, RAJ - J. Higgins, ADA - J. Nayle, Atty - N. King C/R		
11/12/2015	Commonwealth 's Notice of 15th discovery.	87	
11/12/2015	Commonwealth 's Motion for Reciprocal Discovery.	88	
11/12/2015	Endorsement on Motion for Reciprocal Discovery., (#88.0): ALLOWED After hearing, as endorsed, "as to defense file experts opinion, deferred to trial for Dr. DiCataldo's report consistent with Blairdell et al. Lock, RAJ."		
12/14/2015	Defendant 's EX PARTE Motion for further funds for investigative services filed	89	
12/22/2015	Commonwealth 's Notice of discovery 9th(supplemental)	90	
01/13/2016	Event Result: The following event: Final Pre-Trial Conference scheduled for 01/14/2016 02:00 PM has been resulted as follows: Result: Not Held Reason: Transferred to another session		
01/13/2016	Event Result: The following event: Jury Trial scheduled for 01/28/2016 09:00 AM has been resulted as follows: Result: Not Held Reason: Transferred to another session		
01/14/2016	Brought into Court. Sanders, J. - J. Higgins & C. Tilley, ADA's - J. Doyle, Atty - R. LeRoux, C./R. The following event: Final Pre-Trial Conference scheduled for 01/14/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled		
01/14/2016	Joint Pre-Trial Memorandum filed:	91	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
01/14/2016	Commonwealth 's Notice of discovery - sixteen, filed	92	
01/14/2016	Commonwealth 's Request for individual voir dire questions for purposes of jury impanelment, filed	93	
01/14/2016	Commonwealth 's Motion for judicial inquiry into criminal history records of potential trial jurors ect. (see mtn) filed	94	
01/14/2016	Commonwealth 's Motion in limine to exempt family members from the general order of sequestration, filed	95	
01/14/2016	Commonwealth 's Motion in limine to allow a family photograph of victim, filed	96	
01/14/2016	Commonwealth 's Motion in limine to admit autopsy photos, filed	97	
01/14/2016	Commonwealth 's Motion for a view, filed	98	
01/14/2016	Commonwealth 's Motion to correct docket, filed	99	
01/14/2016	Defendant 's Motion in limine for judicial notice of authoritative learned treatise, filed	100	
01/14/2016	Defendant 's Motion in limine to exclude certain prejudicial evidence, filed	101	
01/14/2016	Defendant 's Motion in limine to exclude invalid "scientific" evidence: Arson, filed	102	
01/14/2016	Endorsement on Motion for funds for investigative services, (#89.0): ALLOWED (copies issued)		
01/14/2016	Commonwealth 's Motion for production of medical records (pages 1 thru 8) filed and allowed along with copies of ORDERS. Sanders, J (subpoenas to be issued by ADA. J. Higgins)	103	
01/19/2016	Commonwealth 's Submission to the court of documents in advance of 1/21/16 hearing	104	
01/19/2016	Habeas Corpus for defendant issued to Suffolk House of Correction (South Bay) returnable for 01/21/2016 03:00 PM Hearing on Motion(s) in Limine.		
01/19/2016	Habeas Corpus for defendant issued to Suffolk House of Correction (South Bay) returnable for 01/28/2016 09:00 AM Jury Trial.		
01/20/2016	Medical Records received from MGH		
01/21/2016	Brought into Court. FPTC held. Sanders, J. - J. Higgins, & C. Tilley, ADA's - J. Doyle, Atty - R. LeRoux, C./R.		
01/21/2016	Defendant 's Motion for production of medical records, filed after hearing, allowed. Sanders, J.	105	
01/22/2016	ORDER: re: records, filed.	106	
01/22/2016	Habeas Corpus for defendant issued to Suffolk House of Correction (South Bay) returnable for 01/28/2016 09:00 AM Jury Trial.		
01/22/2016	Notice and Summons (Dwyer) issued to Keeper of Records c/o Joyce O'Connor Taunton State Hospital 60 Hodges Avenue Taunton, Massachusetts 02780 of Taunton State Hospital to produce records by 01/28/2016 to the Clerk of the Superior Court. (Regarding P#105 and P#106)		
01/22/2016	Medical Records received from Cataldo Ambulance Service		
01/22/2016	Medical Records received from Cataldo Ambulance Service		
01/25/2016	Commonwealth 's Motion in limine to admit prior bad act evidence	107	
01/25/2016	Commonwealth 's Motion for individual voir dire questions for purposes of jury impanelment	108	
01/25/2016	Medical Records received from Whidden Memorial Hospital	109	
01/27/2016	Commonwealth 's Request for voir dire questions	110	
01/27/2016	Commonwealth 's Motion in limine for testimony of William Brewer	111	
01/27/2016	Endorsement on Motion in limine for judicial notice of authoritative learned treatise, (#100.0): ALLOWED Sanders, J.		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
01/28/2016	Habeas Corpus for defendant issued to Suffolk House of Correction (South Bay) returnable for 01/29/2016 09:00 AM Jury Trial. *****DAY TO DAY UNTIL CONCLUSION OF TRIAL *****		
01/28/2016	Brought into Court for Trial. Commonwealth moves for trial. Defendant answers ready. Court Sanders J. orders sixteen (16) jurors impaneled. Sanders, J. - J. Higgins & C. Tilley, ADA's - J. Doyle, Atty - R. LeRoux, C./R.		
01/28/2016	Commonwealth 's Response to defense's motion re: interference with witness access	112	
01/28/2016	Endorsement on Motion to correct docket as to indictment # 002 Ch. 265 sec. 15A(c), (#99.0): ALLOWED		
01/29/2016	Brought into Court for further impanelment. Court suspends impanelment due to lack of jurors. To be continued to 2/1/16 Sanders, J. - F. LeRoux, C./R.		
02/01/2016	Brought into Court. Court conducts individual voir dire with two (2) jurors after hearing juror #78 in S# 11 is challenged. Impanelment concluded with sixteen (16) jurors sworn / indictments formally read / Opening statements / Evidence begins. Sanders, J. - J. Higgins & C. Tilley, ADA's - J. Doyle, Atty - R. LeRoux, C./R.		
02/01/2016	Commonwealth 's Request for pre charge jury instructions	113	
02/01/2016	Defendant 's Response to Commonwealth's pre charge request	114	
02/01/2016	Commonwealth 's Response to defendant's motion in limine re: William Brewers testimony, after hearing allowed. Sanders, J.	115	
02/01/2016	Commonwealth 's Response to Defendants motion in limine to exclude certain prejudicial evidence	116	
02/01/2016	Endorsement on Motion in limine to exclude certain prejudicial evidence, after hearing denied in part as endorsed (see record) Sanders, J., (#101.0): DENIED		
02/01/2016	Endorsement on Motion in limine to admit prior bad act evidence, after hearing, allowed. Sanders, J., (#107.0): ALLOWED		
02/01/2016	Endorsement on Motion in limine regarding testimony of William Brewer after hearing, allowed as to statements made and prior. Sanders, J., (#111.0): ALLOWED		
02/02/2016	Brought into court. Trial resumes with sixteen (16) jurors present before Sanders, J. Court conducts individual voir dire of juror #16 in S#15 N.W. after hearing, dismissed. R. LeRoux, C./R.		
02/02/2016	Endorsement on Motion regarding protective order, after hearing, Court allows copies of records to be provided to Commonwealth. Sanders, J., (#32.0): Other action taken		
02/02/2016	Commonwealth 's Response to defendant's motion in limine to exclude invalid "scientific" evidence	117	
02/03/2016	Brought into Court. Trial resumes with fifteen (15) jurors present before Sanders, J. Jurors go on view of crime scene. R. LeRoux, C./R.		
02/03/2016	Melissa Pfeiffer's Memorandum re: DCF records	118	
02/03/2016	Mental Health Records received from Commonwealth of Massachusetts Dept of Mental Health		
02/04/2016	Brought into Court. Trial resumes with fifteen (15) jurors present before Sanders, J. Mtn (P#102) no action taken as endorsed. R. LeRoux, C./R.		
02/04/2016	Event Result: The following event: Jury Trial scheduled for 02/05/2016 09:00 AM has been resulted as follows: Result: Not Held Reason: By Court prior to date		
02/08/2016	Habeas Corpus for defendant issued to Suffolk House of Correction (South Bay) returnable for 02/09/2016 09:00 AM Jury Trial.		
02/08/2016	Event Result: The following event: Jury Trial scheduled for 02/08/2016 09:00 AM has been resulted as follows: Result: Canceled Reason: Court Closure		
02/09/2016	Brought into Court. Court dismisses Juror #14 in S#2 BBS due to illness. Trial resumes with fourteen (14) jurors present before Sanders, J. Commonwealth rests its case in chief. Defendant rests. Charge conference held. M. Wrighton, C./R.		
02/09/2016	Commonwealth 's Request for jury instructions	119	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
02/09/2016	Defendant 's Request for jury instructions	120	
02/09/2016	Commonwealth 's Motion in limine to exclude expert testimony of Dr. DiCataldo and to conduct a voir dire filed and after hearing, see record as endorsed. Sanders, J.	121	
02/09/2016	Business Records received from Cataldo Ambulance Service		
02/09/2016	Habeas Corpus for defendant issued to Suffolk House of Correction (South Bay) returnable for 02/10/2016 09:00 AM Jury Trial. DAY to DAY until Completion of Trial		
02/09/2016	Defendant 's Motion for requiring finding of not guilty at the close of Commonwealth's case filed and after hearing, denied as explained in open Court. Sanders, J.	122	
02/09/2016	Defendant 's Motion for requiring finding of not guilty at the close of all evidence, after hearing, denied. Sanders, J.	123	
02/10/2016	Brought into Court. Trial resumes with fourteen (14) jurors present before Sanders, J. Trial proceeds with closing arguments and charge. Jury reduced to twelve (12) members. J#45 in S#4 B.S. / J# 91 in S#7 M.P. designated as alternate jurors.Deliberations begin at 12:15. R/ LeRoux, C./R.		
02/10/2016	Commonwealth 's Request for supplemental requests for jury instructions filed and after hearing, denied. Sanders, J.	124	
02/10/2016	Endorsement on Motion for requiring finding of not guilty, upon reconsideration , allowed in part as to Off. # 003 - ABDW see endorsement, Sanders, J., (#123.0): DENIED		
02/10/2016	Offense Disposition: Charge #2 A&B WITH DANGEROUS WEAPON, SERIOUS BODILY INJURY c265 §15A (c) (i) Date: 02/10/2016 Method: Jury Trial Code: Not Guilty Finding Judge: Sanders, Hon. Janet L		
02/10/2016	Offense Disposition: Charge #1 MURDER c265 §1 Date: 02/10/2016 Method: Jury Trial Code: Guilty Verdict Judge: Sanders, Hon. Janet L Charge #2 A&B WITH DANGEROUS WEAPON, SERIOUS BODILY INJURY c265 §15A (c) (i) Date: 02/10/2016 Method: Jury Trial Code: Not Guilty Finding Judge: Sanders, Hon. Janet L Charge #3 ARSON OF DWELLING HOUSE c266 §1 Date: 02/10/2016 Method: Jury Trial Code: Guilty Verdict Judge: Sanders, Hon. Janet L Charge #4 FIREFIGHTER, INJURE c265 §13D½ Date: 02/10/2016 Method: Jury Trial Code: Guilty Verdict Judge: Sanders, Hon. Janet L Charge #5 FIREFIGHTER, INJURE c265 §13D½ Date: 02/10/2016 Method: Jury Trial Code: Guilty Verdict Judge: Sanders, Hon. Janet L		
02/10/2016	Verdict affirmed, verdict slip filed as to Off. #001 Murder II	125	
02/10/2016	Verdict affirmed, verdict slip filed as to Off. #003	126	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
02/10/2016	Verdict affirmed, verdict slip filed as to Off. # 004	127	
02/10/2016	Verdict affirmed, verdict slip filed as to Off. # 005	128	
02/10/2016	ORDER: Court orders execution of sentence stayed until 3/21/16, Sanders, J.	134	
02/11/2016	Habeas Corpus for defendant issued to Suffolk House of Correction (South Bay) returnable for 03/21/2016 09:00 AM Hearing for Sentence Imposition.		
03/16/2016	Defendant 's Motion for required finding, post conviction, filed	129	
03/16/2016	Melissa Pfeiffer's Memorandum in aid of sentencing, filed	130	
03/21/2016	Defendant notified of right of appeal to the Appellate Division of the Superior Court within ten (10) days.		
03/21/2016	Defendant notified of right of appeal to the Appeals Court within thirty (30) days.		
03/21/2016	Defendant warned as to submission of DNA G.L. c. 22E, § 3		
03/21/2016	Brought into court. Commonwealth moves for sentencing. Sanders, J. - J.Higgins & C.Tilley, ADA's - J. Doyle, Atty - M. Wrighton, C./R.		
03/21/2016	Correction Sentence Date: 03/21/2016 Judge: Sanders, Hon. Janet L Charge #: 1 MURDER c265 §1 Life with Parole State Prison Sentence-Not Less Than: 15 Years, 0 Months, 0 Days Served Primary Charge Committed to MCI - Framingham Credits 1900 Days		
03/21/2016	Correction Sentence Date: 03/21/2016 Judge: Sanders, Hon. Janet L Charge #: 4 FIREFIGHTER, INJURE c265 §13D½ State Prison Sentence State Prison Sentence-Not Less Than: 3 Years, 0 Months, 0 Days State Prison Sentence-Not More Than: 5 Years, 0 Months, 0 Days Served Concurrently Charge # 1 Case 1184cr10211 Charge #: 5 FIREFIGHTER, INJURE c265 §13D½ State Prison Sentence State Prison Sentence-Not Less Than: 3 Years, 0 Months, 0 Days State Prison Sentence-Not More Than: 5 Years, 0 Months, 0 Days Served Concurrently Charge # 1 Case 1184cr10211 Committed to MCI - Framingham Credits 1900 Days Financials Docket Type Victim/Witness Assessment on felony G.L. c. 258B, § 8. Amount \$90.00		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/21/2016	Issued on this date: Mitt For charges #s 004 &005 Sent On: 03/21/2016 12:05:05		
03/21/2016	Issued on this date: Mitt For Off. #001 Sent On: 03/21/2016 12:11:34		
03/21/2016	Offense Disposition: Charge #1 MURDER c265 §1 Guilty of Lesser included off of Murder II Date: 02/10/2016 Method: Jury Trial Code: Guilty Verdict Judge: Sanders, Hon. Janet L Charge #2 A&B WITH DANGEROUS WEAPON, SERIOUS BODILY INJURY c265 §15A (c) (i) Date: 02/10/2016 Method: Jury Trial Code: Not Guilty Finding Judge: Sanders, Hon. Janet L Charge #3 ARSON OF DWELLING HOUSE c266 §1 Date: 03/21/2016 Method: Other Court Event Code: Dismissed - Request of Commonwealth Judge: Sanders, Hon. Janet L Charge #4 FIREFIGHTER, INJURE c265 §13D½ Date: 02/10/2016 Method: Jury Trial Code: Guilty Verdict Judge: Sanders, Hon. Janet L Charge #5 FIREFIGHTER, INJURE c265 §13D½ Date: 02/10/2016 Method: Jury Trial Code: Guilty Verdict Judge: Sanders, Hon. Janet L		
03/21/2016	Commonwealth oral motion Court orders Off. #003 dismissed, Defendant assenting therteto		
03/21/2016	Commonwealth 's Submission of sentencing memorandum	131	
03/21/2016	Notice of appeal filed Applies To: Doyle, Esq., James M (Attorney) on behalf of Pfeiffer, Melissa (Defendant)	132	
03/21/2016	Defendant 's Motion to withdraw as counsel by Atty James Doyle. (referred to CPCS)	133	
03/21/2016	Appearance entered On this date James M Doyle, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Melissa Pfeiffer		
04/06/2016	Defendant 's Motion for Jail Credit	135	
04/22/2016	Issued on this date: Corrected mittimus issued re: Jail credit		
04/27/2016	Issued on this date: Mitt For Sentence (First 6 charges) Sent On: 04/27/2016 10:37:45 Corrected Mittimus II		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
04/29/2016	Attorney appearance On this date Rebecca Catherine Kiley, Esq. added as Appointed - Appellate Action for Defendant Melissa Pfeiffer	136	
06/14/2016	Court Reporter Nancy King is hereby notified to prepare one copy of the transcript of the evidence of 03/12/2013 09:00 AM Non-Evidentiary Hearing to Dismiss 1st Notice 6/14/16 2nd Notice 12/7/16		
06/15/2016	Court Reporter Richard LeRoux is hereby notified to prepare one copy of the transcript of the evidence of 01/21/2016 03:00 PM Hearing on Motion(s) in Limine, 01/28/2016 09:00 AM Jury Trial, 01/29/2016 09:00 AM Jury Trial, 02/02/2016 09:00 AM Jury Trial, 02/01/2016 09:00 AM Jury Trial, 02/03/2016 09:00 AM Jury Trial, 02/04/2016 09:00 AM Jury Trial		
06/15/2016	Court Reporter Mary Wrighton is hereby notified to prepare one copy of the transcript of the evidence of 02/10/2016 09:00 AM Jury Trial, 02/09/2016 09:00 AM Jury Trial, 03/21/2016 09:00 AM Hearing for Sentence Imposition		
06/16/2016	OTS is hereby notified to provide the JAVS transcript of the proceedings of 10/30/2014 09:00 AM Evidentiary Hearing on Suppression.		
08/09/2016	Appeal: JAVS DVD/CD Received from OTS 10/30/14		
08/19/2016	Pro Se Defendant 's Request for Waiver, Substitution or State payment of fees and costs with Affidavit of Indigency (\$90 VWF). Filed. (copy w/ docket to Sanders-J)	137	
09/21/2016	CD of Transcript of 02/09/2016 09:00 AM Jury Trial, 03/21/2016 09:00 AM Hearing for Sentence Imposition received from Mary Wrighton.		
09/28/2016	Endorsement on of Indigency, (#137.0): Other action taken All Fees (Including Victim Witness and DNA Fees) are waived in light of sentence Defendant is Serving (Copy Sent to Defendant)		
12/22/2016	CD of Transcript of 03/12/2013 09:00 AM Non-Evidentiary Hearing to Dismiss received from Nancy King.		
02/06/2017	Court Reporter Richard LeRoux is hereby notified to prepare one copy of the transcript of the evidence of 02/10/2016 09:00 AM Jury Trial		
03/21/2017	CD of Transcript of 01/21/2016 03:00 PM Hearing on Motion(s) in Limine, 01/28/2016 09:00 AM Jury Trial, 01/29/2016 09:00 AM Jury Trial, 02/01/2016 09:00 AM Jury Trial, 02/02/2016 09:00 AM Jury Trial, 02/03/2016 09:00 AM Jury Trial, 02/04/2016 09:00 AM Jury Trial, 02/10/2016 09:00 AM Jury Trial received from LeRoux.		
03/22/2017	Notice to counsel with transcript(s)		
03/30/2017	Appeal: notice of assembly of record sent to the Appeals Courtl Applies To: Stanton, Clerk, Hon. Joseph (Other interested party); Kiley, Esq., Rebecca Catherine (Attorney) on behalf of Pfeiffer, Melissa (Defendant); Zanini, Esq., John P (Attorney) on behalf of Suffolk County District Attorney (Prosecutor)		
03/30/2017	Appeal: Statement of the Case on Appeal (Cover Sheet).		
04/04/2017	Attorney appearance On this date Rebecca Ann Jacobstein, Esq. added for Defendant Melissa Pfeiffer		
04/04/2017	Rebecca Ann Jacobstein, Esq.'s Notice of appearance. filed	138	
04/06/2017	Commonwealth 's Notice of entry of appeal. filed. in accordance with Massachusetts Rule of Appellate Procedure 10(a)(3), please note that the above-referenced case was entered in this court on March 30, 2017.	139	
04/12/2017	Offense Disposition:: Charge #1 MURDER c265 §1 On: 02/10/2016 Judge: Hon. Janet L Sanders By: Jury Trial Guilty Verdict - Lesser Included Charge #2 A&B WITH DANGEROUS WEAPON, SERIOUS BODILY INJURY c265 §15A (c) (i) On: 02/10/2016 By: Jury Trial Not Guilty Finding		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	<p>Charge #3 ARSON OF DWELLING HOUSE c266 §1 On: 03/21/2016 By: Other Court Event Dismissed - Request of Commonwealth</p> <p>Charge #4 FIREFIGHTER, INJURE c265 §13D½ On: 02/10/2016 By: Jury Trial Guilty Verdict</p> <p>Charge #5 FIREFIGHTER, INJURE c265 §13D½ On: 02/10/2016 By: Jury Trial Guilty Verdict</p>		
06/07/2017	Defendant 's Motion to View and Copy and Impounded Material (Copy with Docket sent to Sanders,J)	140	
06/13/2017	Endorsement on Motion to View and Copy Impounded Material, (#140.0): ALLOWED (Copy and Notice Sent A Jacobstein, ATTY)		Image
11/24/2017	Notice of docket entry received from Appeals Court "The SJC has allowed an application for Direct Appellate Review... Case transferred to SJC"	141	Image
06/10/2019	Rescript received from Supreme Judicial Court; judgment AFFIRMED "The evidence, viewed in a light most favorable to the Commonwealth, was sufficient to establish that the defendant specifically intended to burn the apartment building. Although instruction on the alternative theory of arson was erroneous, that error, whether viewed for prejudice or for a substantial miscarriage of justice, does not warrant overturning the verdicts. As there also is no merit to the defendant's other arguments, the verdicts are affirmed." Probation notified via fax, confirmation in file	142	Image
10/02/2020	Attorney appearance On this date Patrick Levin, Esq. added as Private Counsel for Defendant Melissa Pfeiffer	143	Image
10/13/2020	Defendant 's Motion for new trial with affidavits and memorandum in support thereof (filed) Copy of motion and original CD with docket sheets sent to Sanders, J	144	Image
10/27/2020	Ian MacLean, Esq.'s Notice of Appearance. Filed	145	Image
10/27/2020	Attorney appearance On this date John P Zanini, Esq. dismissed/withdrawn for Prosecutor Suffolk County District Attorney		
10/27/2020	Attorney appearance On this date Julie Sunkle Higgins, Esq. dismissed/withdrawn for Prosecutor Suffolk County District Attorney		
10/27/2020	Attorney appearance On this date Colby M Tilley, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Suffolk County District Attorney		
11/19/2020	Defendant 's Motion for new trial (Amended) filed Notice sent to Sanders, J. with (P.#146) and docket sheets	146	Image
12/10/2020	Endorsement on Motion (Amended) for New Trial, (#146.0): Other action taken Commonwealth is directed to file a written response to this motion within 30 days. **Notice provided to the parties via electronic mail		Image
01/22/2021	Commonwealth 's Motion to enlarge time to file Opposition to Defendant's Post Appeal Motion for New Trial filed (Sanders J, notified with copy and docket sheets).	147	Image
02/22/2021	Endorsement on Motion to enlarge time to file opposition to defendant's post appeal motion for new trial, (#147.0): ALLOWED Notice and copy of endorsement sent to I. MacLean, ADA and P. Levin, Atty by U.S. Mail		Image
02/22/2021	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Patrick Levin, Esq. Committee for Public Counsel Services 100 Cambridge St 14th Floor, Boston, MA 02114 Prosecutor, Attorney: Ian MacLean, Esq. Suffolk County District Attorney's Office One Bulfinch Place Suite 300, Boston, MA 02114		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/02/2021	Commonwealth 's Motion to Enlarge Time to File Opposition to Defendant's Post Direct Appeal Motion for New Trial. Filed (Motion and Docket Sheets sent to Sanders, J)	148	Image
04/05/2021	Endorsement on Motion to enlarge time to file opposition to defendants post direct appeal motion for new trial, (#148.0): ALLOWED (No further extensions) Parties notified via electronic mail		Image
05/12/2021	Commonwealth 's Motion to Enlarge Time to File Opposition to Defendant's Post Direct Appeal Motion for New Trial. Filed (Motion and Docket Sheets sent to Sanders, J)	149	Image
05/18/2021	Endorsement on Motion to Enlarge Time to File Opposition to the Defendant's Post Direct Appeal Motion for New Trial. Filed, (#149.0): ALLOWED (Copy of Endorsement sent to Lan Maclean ADA and Patrick Levin ATTY by Mail)		Image
05/19/2021	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Patrick Levin, Esq. Committee for Public Counsel Services 100 Cambridge St 14th Floor, Boston, MA 02114 Prosecutor, Attorney: Ian MacLean, Esq. Suffolk County District Attorney's Office One Bullfinch Place Suite 300, Boston, MA 02114		
07/08/2021	Commonwealth 's Motion to Enlarge Time and Accept the Opposition to Defendant's Post Direct Appeal Motion for New Trial Filed Today as Timely (Notice sent to Sanders, J. with copy of Motion and Docket Sheets)	150	
07/08/2021	Opposition to paper #146.0 The Defendant's Post Direct Appeal Motion for New Trial or to Reduce the Verdict filed by Suffolk County District Attorney(Notice sent to Sanders, J. with copy of Opposition and Docket Sheets)	151	
07/12/2021	Endorsement on Motion to enlarge time and accept the opposition to defendants post direct appeal motion for new trial filed today as timely, (#150.0): ALLOWED The matter is scheduled for hearing on the motion for new trial on 7/27/2021		Image
07/14/2021	Defendant 's Reply to Commonwealth's opposition to defendant's motion for new trial. Filed (Notice sent to Sanders, J. with copy of Reply and Docket Sheets)	152	Image
07/23/2021	Habeas Corpus for defendant issued to MCI - Framingham returnable for 07/27/2021 02:30 PM Motion Hearing. Meeting ID: 161 265 7568 (ZOOM HEARING) Passcode: 668298 One tap mobile +16692545252,,1612657568#,,,,*668298# US (San Jose) +16468287666,,1612657568#,,,,*668298# US (New York)	153	Image
07/27/2021	Motion for New trial hearing held before Sanders, J (Deft present on zoom from MCI Framingham) After hearing Motion Paper #144 Taken Under advisement Hon. Janet L Sanders, Presiding Appeared ADA I. MacLean, present in Court Atty P. Levin, present in Court FTR 2:32-3:28 Kristen Zitano, Assistant Clerk Magistrate		
11/29/2021	Endorsement on Motion for new trial , (#144.0): DENIED IN PART as to the New Trial Motion, Allowed as to the Reduction of the Verdict to the Lesser Offense of Involuntary Manslaughter See Memorandum of Decision and Order filed this day.		Image
11/29/2021	ORDER: Memorandum of Decision and Order On The Defendant's Motion for a New Trial Or In The Alternative For a Reduction In The Verdict Pursuant To Rule25(b)(2), Filed Parties Notified Via Email This Day. Judge: Sanders, Hon. Janet L	154	Image
12/01/2021	Commonwealth 's Notice of Appeal, filed forwarded to Judge Sanders via email. Attorney: MacLean, Esq., Ian	155	Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Judge: Sanders, Hon. Janet L		
12/02/2021	Habeas Corpus for defendant issued to MCI - Framingham returnable for 12/08/2021 12:30 PM Conference to Review Status. ****DO NOT TRANSPORT**** Zoom appearance only Join Meeting ID: 161 904 4994 Passcode: 668298 +1 646 828 7666 US (New York) Judge: Sanders, Hon. Janet L	156	Image
12/08/2021	Event Result:: Conference to Review Status scheduled on: 12/08/2021 12:30 PM Has been: Held as Scheduled Deft Appeared Via Zoom from MCI Framingham 12/1/21 - Commonwealth has filed a Notice of Appeal on The Courts decision P# 154 Defendant's Notice Of Cross-Appeal filed this day Cont. to 12/16/21 by agreement Hr: Re: Status re: Court's Jurisdiction on Sentence (IX / 713) 9:30AM Deft to appear via Zoom from MCI Framingham Habe for Zoom Appearance faxed. Hon. Janet L Sanders, Presiding Appeared: ADA/ J. Higgins, Ada/ I. McLean, Atty./ P. Levin ACM/ M. Regan FTR: 12:37PM		
12/08/2021	Defendant 's Notice Of Cross-Appeal, Filed Attorney: Levin, Esq., Patrick Judge: Sanders, Hon. Janet L	157	Image
12/08/2021	Habeas Corpus for defendant issued to MCI - Framingham returnable for 12/16/2021 09:30 AM Conference to Review Status. Zoom only ***Do Not Transport*** Meeting ID: 161 904 4994 Passcode: 668298 Judge: Sanders, Hon. Janet L	158	Image
12/13/2021	Event Result:: Conference to Review Status scheduled on: 12/16/2021 09:30 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Janet L Sanders, Presiding		
12/13/2021	Habeas Corpus for defendant issued to MCI - Framingham returnable for 12/20/2021 10:00 AM Conference to Review Status. Zoom only ***Do Not Transport*** Meeting ID: 161 904 4994 Passcode: 668298 Attorney: Levin, Esq., Patrick Judge: Sanders, Hon. Janet L	159	Image
12/14/2021	Defendant 's Request to Proceed with Resentencing, filed Attorney: Levin, Esq., Patrick	159.1	Image
12/14/2021	Defendant 's Certificate Certification of Availability of Transcript, Filed Attorney: Levin, Esq., Patrick Judge: Sanders, Hon. Janet L	159.2	Image
12/15/2021	Notice of assembly of record sent to Counsel		Image
12/15/2021	Attorney appearance On this date Cailin Campbell, Esq. added as Appointed - Appellate Action for Prosecutor Suffolk County District Attorney		
12/15/2021	Notice to Clerk of the Appeals Court of Assembly of Record		Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/15/2021	Appeal: Statement of the Case on Appeal (Cover Sheet).	160	Image
12/17/2021	Commonwealth 's Motion Opposition to Resentencing the Defendant During the Pendency of the Appeal of This Court's Ruling Reducing the Verdict, Filed Attorney: MacLean, Esq., Ian Judge: Sanders, Hon. Janet L	161	Image
12/20/2021	Event Result:: Conference to Review Status scheduled on: 12/20/2021 10:00 AM Has been: Held as Scheduled via Zoom Deft present on Zoom form MCI Framingham Hearing Re: Court's Jurisdiction to conduct resentencing After hearing Court has decided t does have Jurisdiction to Sentence (See Record) Cont to 1/24/21 reg of Deft Re: Sentencing hearing (II, 806) 2PM via Zoom Zoom to be confirmed as the date nears. Zoom or Live Habe needed for Defendant to MCI Framingham Hon. Janet L Sanders, Presiding Appeared via Zoom: ADA/ I. MacLean, ADA/ J. Higgins , Atty./ P. Levin ACM. Mary Regan FTR: 9:55AM		
01/14/2022	Commonwealth 's Motion for a stay of resentencing hearing, filed	162	Image
01/14/2022	Opposition to paper #162.0 to stay of resentencing filed by Melissa Pfeiffer	163	Image
01/18/2022	Endorsement on Motion for a stay of resentencing hearing, (#162.0): DENIED for reasons stated in opposition		Image
01/20/2022	Habeas Corpus for defendant issued to MCI - Framingham returnable for 01/24/2022 11:00 AM Hearing for Sentence Imposition. TRANSPORT TO COURT	164	
01/20/2022	Commonwealth 's Petition for relief under G.L. c 211 Section 3, from an order of the Suffolk Superior Court setting resentencing hearing after allowing a post appellate review motion to reduce the verdict which is now on appeal, filed	165.1	Image
01/21/2022	Commonwealth 's Motion for a stay of any hearing on January 24, 2022, filed	165	
01/21/2022	Endorsement on Motion for a stay of any hearing in January 24, 2022, (#165.0): Other action taken This motion will be heard on Monday at 11:00 January 24, 2022		Image
01/21/2022	Commonwealth 's EMERGENCY Motion to stay trial court proceedings including bail hearing following the allowance of a Rule 25 (B) (2) motion to reduce the verdict that is currently under appellate review, filed	165.2	Image
01/24/2022	Defendant brought into Court. Status hearing held before Sanders, J. (See record of proceedings) Case continued by agreement to 1/31/2022 at 2:00 for a further status Re: SJC proceedings Hon. Janet L Sanders, Presiding Appeared ADA I. MacLEAn and J. Higgins Atty P. Levin FTR 11:45-12:08 Kristen Zitano, Assistant Clerk Magistrate		
01/25/2022	Habeas Corpus for defendant issued to MCI - Framingham returnable for 01/31/2022 02:00 PM Conference to Review Status. Meeting ID: 160 926 5652 (ZOOM HEARING) Passcode: 668298	166	
01/26/2022	Status hearing held before Sanders, J via zoom (Defendant not present on zoom) Hearing held with parties Re: SJC proceedings/Filings Deft to have memo filed with the court by the end of the business day on 1/27/2022 Comm to have memo filed with the court by the end of the business day on 1/28/22 Hon. Janet L Sanders, Presiding Appeared		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	ADA I. MacLEAn and J. Higgins Atty P. Levin FTR 12:16-12:22 Kristen Zitano, Assistant Clerk Magistrate		
01/26/2022	Commonwealth 's Response to trial court memorandum of decision, filed	167.1	Image
01/27/2022	Melissa Pfeiffer's Memorandum	167	Image
01/28/2022	Event Result:: Conference to Review Status scheduled on: 01/31/2022 02:30 PM Has been: Canceled For the following reason: By Court prior to date Hon. Janet L Sanders, Presiding Staff: Kristen Zitano, Assistant Clerk Magistrate		
01/31/2022	MEMORANDUM & ORDER: in response to Single Justice's Order dated January 26, 2022 Judge: Sanders, Hon. Janet L	168	Image
02/08/2022	Notice of docket entry received from Supreme Judicial Court Memorandum of Decision & Judgment: "In my interim order of January 26, 2022, I summarized the procedural history of this matter and invited the Superior Court judge to provide me with a memorandum answering four specific questions that I posed. The judge has since filed her memorandum.[1] The issues that I asked the judge to address related both to her authority to resentence the defendant in the circumstances presented here and to the effect of any resentencing, including the impact of a stay of execution of the sentence should one be granted, while the Commonwealth's appeal from her order reducing the degree of the verdict remains pending. In her response, the judge states among other things that, given the concerns reflected in my questions and in order "to allay the need for any further emergency motions or interlocutory appeals," she would "commit to allowing a stay" (the Commonwealth has already indicated that it would seek a stay) if the new sentence is less than or equal to the time that the defendant has already served. She further states that, in that circumstance, she would then hold a bail hearing to determine whether the defendant should be released pending the Commonwealth's appeal from the verdict reduction. Given the judge's assurances, it is ORDERED that the Commonwealth's petition, and its request that this court vacate the judge's order for a resentencing hearing, is hereby DENIED without prejudice. Resentencing on the reduced verdict may proceed. The reduction of the verdict and the new sentence, however, shall be stayed pending the Commonwealth's appeal. If the new sentence is equal to or less than the time that the defendant has already served, such that the defendant would (but for the stay) be entitled to release from custody, the judge may consider a motion by the defendant to be released on bail. Either party would of course have the usual opportunity to seek review of an adverse bail determination pursuant to G. L. c. 211, § 3. The judge should also, if she allows the defendant to be immediately released on bail, stay such decision to provide the Commonwealth adequate time to seek review of such determination pursuant to G. L. c. 211, § 3, if it so chooses." (Kafker, J.)	169	Image
03/01/2022	Habeas Corpus for defendant issued to MCI - Framingham returnable for 03/04/2022 11:30 AM Hearing for Sentence Imposition. TRANSPORT TO COURT	170	Image
03/04/2022	Defendant files sentence recommendation	171	Image
03/04/2022	Defendant brought into Court Hearing Re: Re Sentencing The Court Sanders, J Vacates the sentence Imposed on Offense 001 and reduces the verdict to Involuntary Manslaughter The Court sentences the defendant to not more than 10 years in state prison not less than 8 years, That sentence is DEEEMED SERVED SENTENCE STAYED PENDING APPEAL BY THE COMMONWEALTH Defendant remains on existing sentence of 2nd Degree Murder See Sentencing Statement Paper #172 Hon. Janet L Sanders, Presiding Appeared ADA J. Higgins and ADA I McLean Atty P. Levin, Atty FTR Kristen Zitano, Assistant Clerk Magistrate		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/04/2022	Released on Personal Recognizance with the following conditions: Other Special Condition 1.The defendant will enter and remain in a residential program comparable to New Beginnings or McGrath house during pendency of this appeal, She may not be released from custody until such placement is available. 2. Defendant will check in with probation by telephone weekly and sign any releases necessary for probation to verify the defendants placement and participation in program. See memorandum Paper #173 THIS BAIL IS STAYED PENDING COMMONWEALTHS APPEAL FOR 10 DAYS		
03/04/2022	MEMORANDUM & ORDER: Sentencing statement Judge: Sanders, Hon. Janet L	172	Image
03/04/2022	MEMORANDUM & ORDER: on Bail Judge: Sanders, Hon. Janet L	173	Image
03/18/2022	Notice of docket entry received from Appeals Court Superintendence c211 s 3 transfer from the Supreme Judicial Court	174	
03/22/2022	Habeas Corpus for defendant issued to MCI - Framingham returnable for 03/23/2022 02:00 PM Bail Hearing. TRANSPORT TO COURT	175	Image
03/22/2022	Notice of docket entry received from Appeals Court ORDER (RE#1): This matter came before the Court on the petition of the Commonwealth pursuant to G.L. c. 211, s. 3, which the Supreme Judicial Court referred to the Single Justice of the Appeals Court, in accordance with the Supreme Judicial Court's June 3, 2020 "Standing Order regarding Transfer of Certain Single Justice Matters during the COVID-19 Pandemic." The Commonwealth seeks review of the March 4, 2022, order of the Suffolk Superior Court (Sanders, J.) releasing the defendant on personal recognizance during the pendency of the Commonwealth's appeal of an order reducing the jury's verdict of murder in the second degree to involuntary manslaughter. The Commonwealth contends that the judge erroneously concluded the defendant was not a flight risk, and at a minimum should have imposed GPS monitoring. The single justice reviews a bail decision for abuse of discretion or clear error of law. <i>Comnesso v. Commonwealth</i> , 369 Mass. 368, 374 (1975); <i>Vasquez v. Commonwealth</i> , 481 Mass. 747, 751 (2019). Pursuant to G. L. c. 276, s. 58, a person shall be admitted to bail on personal recognizance without surety unless the judge determines that such a release will not reasonably assure the person's appearance before the court. See <i>Delaney v. Commonwealth</i> , 415 Mass. 490 (1993) (noting s.58 establishes presumption of release). "[A] judge's discretionary decision constitutes an abuse of discretion where we concluded the judge made a clear error of judgment in weighing the factors relevant to the decision, such that the decision falls outside the range of reasonable alternatives." <i>L.L. v. Commonwealth</i> , 470 Mass. 169, 185 n.27 (2014). Here, the record demonstrates that the bail judge properly weighed all relevant factors when granting release on personal recognizance with conditions. The judge considered the nature of the case, potential penalties faced, the defendant's lack of financial resources, family ties in the State, and lack of criminal history, defaults, aliases, restraining orders, allegations of domestic abuse, or substance abuse. In concluding that the defendant did not pose a flight risk, the judge did not impose GPS monitoring as a condition of release. See <i>Commonwealth v. Norman</i> , 484 Mass. 330, 338 (2020) (denying GPS monitoring where it would not increase the likelihood of the defendant returning to the court). I discern no abuse of discretion or clear error of law. Accordingly, the Commonwealth's petition is denied. So ordered. (Desmond, J.). Notice/attest/Sanders, J.	176	
03/23/2022	Defendant brought into Court Bail hearing held before Sanders, J Hon. Janet L Sanders, Presiding Appeared ADA J. Higgins Atty P. Levin FTTR Kristen Zitano, Assistant Clerk Magistrate		

<u>Docket Date</u>	<i>Docket Text</i>	<u>File Ref Nbr.</u>	<i>Image Avail.</i>
03/23/2022	Released on Personal Recognizance with the following conditions: Other Special Condition 1. Must enter and remain in McGrath House 2. Must report to probation weekly by phone 3. Must sign any and all releases for probation See memo of Bail Paper #173 Judge: Sanders, Hon. Janet L		
03/23/2022	Bail warnings read Judge: Sanders, Hon. Janet L		
03/23/2022	The following form was generated: Release from Custody Order Sent On: 03/22/2022 14:18:55	177	Image

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
NO. 1184CR10211

COMMONWEALTH

vs.

MELISSA PFEIFFER

MEMORANDUM OF DECISION AND ORDER
ON DEFENDANT'S MOTION FOR NEW TRIAL
OR IN THE ALTERNATIVE, FOR A REDUCTION IN THE VERDICT
PURSUANT TO RULE 25(b)(2)

In February 2016, the defendant was convicted of second degree murder on a theory of felony murder, that felony being arson. She was also convicted of two counts of injuring a firefighter. This Court sentenced the defendant to the mandatory term of life in prison on the murder charge, with concurrent four to five year sentences on the two other counts. Her conviction was affirmed on appeal. Commonwealth v. Pfeiffer, 482 Mass. 110 ((2019)). The case is now before the Court on the defendant's Motion for New Trial pursuant to Rule 30(b), Mass.R.Civ.P. In the alternative, she moves for a reduction in the verdict to involuntary manslaughter, relying on Rule 25(b)(2). This Court concludes that the Motion for New Trial must be denied. This Court does conclude, however, that justice was not done, and that in the exercise of the discretion conferred upon me by Rule 25(b)(2), reduces the verdict to the lesser offense of involuntary manslaughter.

Filed
11-29-2021

BACKGROUND¹

A. The Trial

A summary of the trial testimony is set forth in the SJC's decision affirming Pfeiffer's conviction. In December 2010, the defendant was living on the first floor of a two-unit apartment building in Chelsea with her boyfriend William Brewer and their two-year-old son. On December 24, after dropping their son off with a relative, the defendant returned to the apartment and had an argument with Brewer, who left for a nearby bar. When Brewer returned, Pfeiffer told him that his clothes were on fire: the defendant had lit a piece of paper and tossed it on a duffel bag of clothing that was sitting on the floor in a corner of the apartment. Pfeiffer had changed out of her night clothes and left the apartment, the exterior door of the building locking behind her. The evidence showed that she remained on the scene continuing to argue with her boyfriend even as flames became visible through the apartment windows. She did not call for help or alert other occupants. The blaze quickly engulfed the building, killing Cate Blanchard, an occupant of the second unit, and severely injuring her boyfriend, Paul Pitts.

Pfeiffer's defense focused primarily on the issue of intent, her counsel arguing that, because of severe limitations in her intellectual and cognitive abilities coupled with a mental disorder, the evidence was insufficient to show that she intended to burn the building when she lit her boyfriend's clothing on fire. In support of this position, the defense called as a witness Dr. Frank Cataldo, who testified to Pfeiffer's harrowing childhood and a string of psychiatric admissions that supported a diagnosis of post-traumatic stress disorder.² Dr. Cataldo also

¹ Materials submitted in connection with the Motion for New Trial include a Record Appendix (referenced herein as R.A.) the Affidavits of the defendant's trial counsel and appellate counsel, and the transcript of the Trial itself (referenced herein as Tr., followed by which day of trial and page number).

² In summarizing the records he reviewed and in support of his forensic opinion, Dr. Cataldo told the jury that Pfeiffer had first come to the attention of the Department of Social Services (DSS), when she was two years old: DSS suspected that she and her older sister, age 4, had been the victims of ritualistic sexual abuse at the hands of her biological parents. She had also been the subject of physical abuse, with multiple 51A reports filed in that

concluded, based on testing that he conducted, that Pfeiffer had extremely limited intellectual function, possessing an overall IQ of 71 that placed her in the third percentile of all adults. Her perceptual reasoning abilities were extremely weak, meaning that, in addition to being unable to pick up on social cues, "it takes her a long time to process information." Tr. 7: 138. Although Dr. Cataldo did not believe that these various deficits meant that the defendant was not criminally responsible, he did conclude that her cognitive limitations and her mental disorder impaired her ability to fully understand the circumstances surrounding her actions, the risks that they created and the consequences that could flow from them. In particular, she was not capable, in Dr. Cataldo's opinion, of fully appreciating what might follow if she were to set her boyfriend's clothing on fire.

In preparing a defense, Pfeiffer's trial counsel from the beginning focused on the issue of her state of mind at the time she set fire to the clothing. Indeed, concerned that the Commonwealth could proceed on an alternative theory that the defendant committed arson because she failed to extinguish or report the fire once she saw that her actions had led to the burning of a dwelling, counsel filed a Motion for Bill of Particulars well before the trial was scheduled. At a hearing on that motion, the Commonwealth agreed that it would not proceed under that alternative theory. At the final charge conference in the trial, however, this Court on its own (and based on what it understood to be the law) suggested that arson could be committed in one of two ways: by willfully and maliciously setting fire to a dwelling or some part of it, OR

period. During the course of her first psychiatric hospitalization at age 3, details of the sexual abuse came to light: it appeared that both parents may have inserted objects into Pfeiffer's vagina and rectum. She was removed from the custody of her parents, whose parental rights were terminated. She went through a series of foster placements, engaging in sexualized and self-injurious behavior that Dr. Cataldo attributed to the trauma she had suffered as a toddler. Although she was adopted at age nine, her adoptive parents ultimately abandoned her back to DSS three years later, and she became a ward of the state. Throughout this period, she was placed in various residential treatment programs and admitted to several hospitals for psychiatric treatment. At eighteen upon becoming an emancipated adult, she was released from DSS custody and became homeless. (Dr. Cataldo's testimony is set forth at Tr. 7: 119-183).

willfully and maliciously making no attempt to extinguish the fire after the defendant started it. The Court suggested this Supplemental Instruction because the evidence that the defendant stood by at the scene and could quite clearly see flames inside the building yet did nothing and simply watched seemed even stronger and more persuasive than evidence regarding her intent at the time she threw a burning piece of paper on the duffle bag inside her apartment. Accordingly, this Court, over the defendant's objection, instructed the jury that, with regard to the intent required to prove arson, the Commonwealth may satisfy its burden of proof by showing either that the defendant willfully and maliciously set fire to the dwelling or some portion of it, or that, having caused the fire, the defendant "willfully and maliciously failed to extinguish it or to report it. *In that circumstance, the necessary criminal state of mind for arson may be formed after a fire starts.*" (Italics added.) This Supplemental Instruction was in line with language in the MCLE Model Superior Court Criminal Practice Jury Instructions at the time.

What was enough to support the crime of arson was critical, since the Commonwealth relied on that crime to support its theory that the defendant was guilty of murder in the second degree on a theory that Ms. Blanchard died during the defendant's commission of the felony of arson. Ultimately, the jury found the defendant guilty on that felony murder theory. Although it was permitted to consider as well whether the defendant had committed an unlawful killing with malice, it was not able to reach unanimous agreement on that second theory. That second theory would have required the jury to find that the defendant acted with malice – that is, that she had the requisite state of mind not just with respect to the arson but also as to the killing itself. Having convicted the defendant of murder based on the commission of a felony, the jury did not consider the lesser included offense of involuntary manslaughter.

On appeal of these convictions, the SJC granted an application for direct appellate review.

B. The Appeal

On the appeal of the defendant's conviction, the SJC was unanimous in concluding that this Court erred in giving the Supplemental Instruction for arson that is described above. That is, this Court was wrong in permitting the jury to find that the defendant committed the crime of arson on the theory that she developed the requisite intent necessary for that crime only after she threw the lighted paper into the duffel bag and had left the building.³ The SJC split four to three (Gants, Lenk and Budd, dissenting) on whether that error meant that the defendant was entitled to a new trial. The split of opinion was on two issues: (1) whether the defendant had preserved the error with a timely objection; and (2) whether that error required a reversal of the defendant's conviction and a new trial.

As to the first issue, the majority held that, although the defendant objected to instructing the jury on this alternative theory, the objection was based on the earlier ruling on a Motion for Bill of Particulars -- an objection based on waiver rather than an objection that called the Court's attention to the fact that, even apart from waiver, the Supplemental Instruction was simply wrong. That trial counsel relied on waiver is not surprising: as already noted, the Model Jury Instruction contained the erroneous language that this Court used, and trial counsel had every reason to think that he had done all that was necessary to foreclose consideration of the alternative theory. If the SJC had held that there was a proper and timely objection made, then the case would be analyzed based on whether the error was "harmless." In declining to apply

³ The SJC was also unanimous in concluding that arson is not a specific intent crime but rather one of general intent. Both the defendant and the Commonwealth, however, tried the case under the impression that it was a specific intent crime.

that standard, the majority determined instead whether there had been a “substantial miscarriage of justice” and concluded that there was not.

The dissent disagreed with the majority regarding the appropriate standard to apply, concluding that this Court’s mistake in the instructions should be analyzed under the harmless error standard and that this error was prejudicial. As to whether the objection was properly preserved, the dissent was of the view that trial counsel reasonably relied on the Commonwealth’s earlier commitment not to proceed under this alternative theory and that as a result, counsel had no reason to look into the correctness of instructions which followed the Model Jury Instructions. Even more important, the defendant had no reason to expand the focus of the defense to include any arguments as to what the defendant intended after the fire was started. As Judge Gants explained in the dissent, the “fundamental unfairness” of this was apparent: “the defendant here was stripped of a fair opportunity to prepare her defense to a separate and distinct theory of criminal liability that, in effect, relieved the Commonwealth of its burden to prove that she intended to set fire to a dwelling.” 482 Mass. at 139.

Although the majority of the Court held that the harmless error standard did not apply (because no timely objection had been made), the majority nevertheless proceeded to analyze the case assuming that the dissent was correct and that the defendant’s objection to the Supplemental Instruction was preserved. No reversal would be required if the reviewing court (here the SJC) concluded that the error “did not influence the jury or had but a slight effect.” Commonwealth v. Flebotte, 417 Mass. 348, 353 (1984). Applying this standard, the SJC majority concluded that it did not affect the verdict, noting that the Commonwealth in its closing argument argued for a conviction without relying on the Supplemental Instruction that this Court erroneously gave. Moreover, the evidence that the defendant intended to ignite a bag of Brewer’s clothes was

“overwhelming” if arson had been defined properly as a general rather than a specific intent crime. But see fn. 2, supra. Accordingly, the error was harmless. Here too, the dissent parted company with the majority.

The dissent concluded that, although the evidence may have been overwhelming that the defendant intended to light a piece of paper and throw it on a pile of clothes, the evidence was “less than overwhelming” that she intended the resulting harm at that point –namely, the burning of a building or some part of it. 482 Mass. at 135. That was particularly true in this case, given the compelling evidence offered by Dr. Cataldo. Even if a person of ordinary intelligence might recognize that an act like that committed by the defendant would likely result in the charring of some part of the apartment, Pfeiffer was far from ordinary. Considering this evidence, the dissent concluded that a reasonable juror may have had a reasonable doubt as to whether the defendant recognized that burning some part of the building was inevitable at that point in time when she threw the burning paper on the clothing. In short, “if the judge’s instructions had been legally correct, the consequence of that reasonable doubt may have been a not guilty verdict or a hung jury, or a guilty verdict of involuntary manslaughter.” 482 Mass. at 138.

Following the affirmance of the defendant’s convictions, this Motion for New Trial was filed.

DISCUSSION

The defendant’s motion is brought pursuant to both Rule 25(b)(2) and Rule 30(b) of the Massachusetts Rules of Criminal Procedure. Both rules “permit a judge to act where justice may not have been done. Rule 30(b) says so explicitly, while Rule 25(b)(2) says so implicitly.” Commonwealth v. Gilbert, 447 Mass. 161, 166 (2006). These rules reflect a legislative policy to ensure that the result in every criminal case is consonant with justice, even where there is no

error of law and the evidence is sufficient. Commonwealth t. Woodward, 427 Mass. 659, 666 (1998). Although these post-conviction powers are to be used sparingly, the authority that is vested in the trial judge is broad, subject to appellate review only for an abuse of discretion or an error of law. 427 Mass. at 668. This appellate deference to the trial judge is due to the fact that the trial judge “is in a far better position” than the appellate court to make the judgment required by the rules. *Id.*

In arguing that justice was not done in this case, the defendant cites four factors or reasons which in combination warrant allowance of her motion. First, the evidence regarding the defendant’s intent on the arson charge was weak. Second --and related to this first argument-- the defendant’s personal characteristics constitute mitigating circumstances: operating with borderline intelligence and hampered by a mental disorder, Pfeiffer simply did not possess the capacity to fully appreciate the fact (at least at the time she committed the act) that throwing a burning piece of paper on a duffle bag created a plain and strong likelihood that the building or some part of it to burn. Third, the Supplemental Instruction – an instruction that the SJC unanimously concluded was in error -- may very well have had the impact on the jury that Judge Gants described in his dissent. This error in the instructions was compounded by this Court’s failure to require the jury to specify the theory under which they found the defendant guilty of arson – an issue that the SJC did not address. Fourth, had this trial been held just eighteen months later, the Commonwealth would have been unable to proceed using felony murder as an independent theory of liability for murder. Commonwealth v. Brown, 477 Mass. 805 (2017) (holding that the felony murder rule should be narrowed so that, in trials commencing after September 16, 2017, the defendant may not be convicted of murder without proof of one of the three prongs of malice). This Court concludes – based on the combination of these factors --

that the defendant has met her burden of showing that justice was not done such that she is entitled to have the murder conviction set aside.

Turning to the first two factors, this Court's assessment of the evidence about the defendant's knowledge and intent at the time she set the fire is that it was not particularly strong. Although the defendant herself admitted to wanting to burn Brewer's clothes (thus belying any claim of accident), the evidence at trial that she understood, at least at that point in time that she tossed the paper, that the fire would spread beyond the clothes was not overwhelming. For example, there was evidence that Pfeiffer had tried to set her boyfriend's clothes on fire on at least one previous occasion without it having led to the burning of anything else. See Tr. Day 4: 213 (testimony of Brewer); see also Tr. Day 4: 117, 120 (Pfeiffer told a third party at the scene of the fire that "the last time I did it [referring to trying to burn Brewer's clothes] nothing happened"). In other words, there was nothing about her prior experiences to suggest to her that the apartment could burn if she took the action that she did. There was also no evidence of motive: Pfeiffer had little or no contact with her neighbors or landlord, and everything she owned was in that apartment – a unit which she was lucky to have found since she had spent many months homeless. Pfeiffer shared that apartment not only with Brewer but also with her two-year-old child, and the evidence showed that she was an attentive and caring mother. In short, although there was ample evidence to show that the defendant was mad at her boyfriend and wanted to destroy his property, there was little evidence that Pfeiffer intended or even understood that what she was doing could lead to the destruction of a dwelling or any part of it. This Court accepts the SJC's conclusion that the evidence was sufficient to sustain a conviction, but these weaknesses in the evidence are still considerations that this Court can bring to bear in determining whether justice was done.

The evidence was stronger that Pfeiffer became aware of the consequences of her actions and then did nothing to either report the fire or extinguish it, but that only highlights the impact of the error on the trial. Indeed, the very reason why this Court concluded that a Supplemental Instruction was necessary was because one interpretation of the evidence was that the defendant developed the requisite intent only after the fire was started. The Commonwealth itself understood the vulnerabilities of its case, stating at the charge conference that the alternative theory of liability that was ultimately found to be erroneous was necessary precisely because of the diminished capacity defense that was also going to be the subject of a jury instruction. The actions of the defendant after the fire had started – leaving the building and then standing by and watching the fire, knowing that two people lived upstairs – directly supported this alternative theory of arson. This alternative theory is precisely what the SJC unanimously decided was erroneous.

The evidence regarding the defendant's state of mind must also be viewed in the context of Dr. Cataldo's testimony. According to Dr. Cataldo, Pfeiffer was extremely limited in her ability to process information: operating with a borderline IQ and suffering from a mental disorder, she was slow to understand the consequences of her actions. Dr. Cataldo's testimony was based on his personally meeting with the defendant for twelve hours, viewing the video recording of the defendant's interview with police regarding the events that gave rise to the charges, and reviewing records of DCF dating back to when Pfeiffer was a child. Dr. Cataldo also administered a series of psychological tests to the defendant, all of which supported his conclusions. As the judge presiding at the trial, this Court recalls that Dr. Cataldo's testimony was quite powerful. Certainly, the Commonwealth offered no evidence to contradict it.

Although not presented to the jury, this Court has also reviewed Dr. Cataldo's written report of his examination, which lays out in even greater detail the sexual and physical abuse Pfeiffer suffered at the hands of her biological parents. See R.A. 131-142. Before she was removed from her parents care in 1987 at the age of three, there had already been at least eight separate abuse and neglect reports filed on her behalf. See fn. 2, supra. Between the age of three and eighteen, Pfeiffer was placed in a series of DMH placements and residential programs. She was psychiatrically hospitalized multiple times before her arrest in this case, with the most recent triggered by a report that, while held awaiting trial, she tied a paper "johnnie" around her neck and put her head in a toilet in an attempt to drown herself. Dr. Cataldo opined that as a result of Pfeiffer's mental illness, she is "easily affectively dysregulated and prone to impulsive, poorly planned and contemplated behavior." R.A. 141.

Dr. Alison Fife, who also evaluated the defendant (but did not testify at trial) essentially agreed with Dr. Cataldo's conclusions and appeared to go a step further. As set forth in her report, Dr. Fife concluded that "Ms. Pfeiffer's capacities to conform her behavior to the requirements of the law [on the night of the incident], specifically to maintain behavioral control, were impaired by her cognitive limitations and PTSD as evidenced by her concrete thinking and poor analytical skills, impaired ability to weigh the consequences of her emotions and resultant behaviors before acting on them and poor impulse control and coping skills." R.A. 152. Dr. Fife was designated by the Commonwealth to conduct an independent evaluation of Pfeiffer.⁴ Although the Commonwealth did end up separately engaging its own expert, it ultimately presented no expert testimony as part of its own case.

⁴ After receiving Dr. Fife's report, the Commonwealth sought to have a different expert independently examine Pfeiffer. The Court (Connors, J.) denied that request on July 11, 2014, noting that the request appeared to be made in the hopes that a new examination "might be more advantageous to its legal position."

Although this Court understands (and does not question) the SJC's conclusion that the evidence was enough to support the murder conviction, the SJC reached that conclusion by viewing the evidence in the light most favorable to the Commonwealth. In ruling on a Motion under Rule 25(b), this Court is conducting a different kind of review – namely, to determine, considering the weight of the evidence, whether justice has been done. See Sanchez, 485 Mass. at 504 (It is “well established” that a trial judge has broad discretion to reduce a jury verdict under Rule 25(b)(2), even where the evidence supported it); see also Commonwealth v. Chhim, 447 Mass. 370, 382-383 (2006) (a judge is “not limited ... to viewing the evidence in the light most favorable to the Commonwealth”); Commonwealth v. Ghee, 414 Mass. 313, 321 (1993) (reduction in verdict not based on absence of evidence but because it was more consonant with justice). Rule 25(b) also permits the Court to consider matters not strictly part of the evidence at trial. Commonwealth v. Kolenovic, 478 Mass. 189, 209 (2017) (indicating judge may review facts not presented to jury but only where related to evidence presented and defense's theory of case); Commonwealth v. Pagan, 471 Mass. 537, 543 (2015) (judge considered written report of psychologist who testified at trial that was included in the post-trial motion). This case law is yet another indication that this Court' review of the case under Rule 25(b) is different from the review conducted by the SJC.

This Court's error in allowing the jury to consider an alternative theory of arson was compounded by its failure to give a specific unanimity instruction on the two theories of arson set forth in the Model Instruction, thus leaving any reviewing court to speculate as to how the jury reached its decision on the felony murder charge. This is the third factor that supports allowance of the defendant's motion. Trial counsel specifically requested a specific unanimity instruction, so this issue was preserved for appeal and was argued as well. The SJC declined to

address it, presumably because the Commonwealth in its closing argument did not explicitly rely on the alternative theory of arson that the jury was permitted to consider and because arson does not require specific intent (something neither party understood when the case was tried). See 482 Mass. at 129, fn. 19. But this issue seems quite significant in that the jury may well have credited Dr. Cataldo's testimony regarding the defendant's limitations and yet, because they were specifically instructed that "the necessary criminal state of mind for arson may be formed after a fire starts," concluded that she was guilty of felony murder even though she was not capable of understanding the consequences of her actions at the moment she tossed the smoldering paper. Alternatively, six of the jury could have found Pfeiffer guilty of arson (and thus of felony murder) based on one theory (the correct one), with six others voting guilty based on the alternative theory of liability that the jury was permitted (erroneously) to consider.

To the extent that any insight into the jury's thinking can be gleaned from the verdict that it did return, this supports Ms. Pfeiffer's position that the jury may not have been able to agree as to the defendant's guilt on the felony murder charge if they had been correctly instructed. Before considering that charge, the jury was instructed to consider first whether the Commonwealth had proved murder with malice. As to that charge, this Court told the jury that they must focus on "what the defendant actually knew about the relevant circumstances *at the time she acted*," considering any credible evidence of mental impairment. Tr. 8.104 (emphasis added.) It then defined the three prongs of malice, which includes the "intent to do an act which, under the circumstances known to the defendant at the time, a reasonable person would have known created a plain and strong likelihood that death would result." The Court instructed the jury to proceed to felony murder regardless of their decision on murder with malice. That the jury did not return a verdict on the murder with malice charge means (assuming they followed

this Court's instructions) that they were unable to unanimously agree on that charge. It was only on the felony murder charge that the jury was permitted to find that Pfeiffer possesses the necessary *mens rea* for the crime based on her state of mind after the act itself – and based on a failure to act.

This Court acknowledges that when it did instruct on felony murder, it erroneously assumed (as did the parties) that arson was a specific intent crime. The SJC unanimously concluded that it was a generally intent crime.⁵ In upholding the conviction, the majority stated that this meant that the defendant received the benefit of a more favorable instruction on intent than she was entitled to receive, noting that (given that arson was a general intent crime), the evidence was “overwhelming.” What the majority did not address, however, is the constitutional issue that is raised when the jury, having failed to agree as to murder with malice, was then presented with two ways to find Pfeiffer guilty of felony murder, one of which would not support a conviction. Pfeiffer has a constitutional right to have a jury determine her guilt or innocence. Thus, even if the same result would obtain on a retrial where the court properly instructed that arson was a general intent crime, the fact remains that she had the right to have a jury decide her guilt -- and convict her only if they could all agree. See Sullivan v. Louisiana, 508 U.S. 275, 279 (1993) (“to hypothesize a guilty verdict that was never in fact rendered – no matter how inescapable the findings to support that verdict might be – would violate the jury trial guarantee”); see also Cole v. Arkansas, 333 U.S. 196, 202 (1948) (“To conform to due process of law, the petitioners were entitled to have the validity of their convictions appraised on consideration of the case as it was tried.”) This Court understands that appellate counsel did not

⁵ The majority acknowledged that the question of what intent was required under the arson statute, G.L.c. 266 §1, had not been squarely addressed by any of its prior decisions. It is therefore not surprising that the case was tried on the assumption that arson required specific intent.

specifically raise this federal constitutional question. But it is nevertheless an important factor for this Court to consider in determining that justice was not done.

The fourth factor that supports allowance of the defendant's motion is that, had Pfeiffer's trial gone forward just a year and a half later, the Commonwealth could not have relied on a theory of felony murder as defined by this Court at that time. In September 2017, the SJC held that the Commonwealth could no longer rely on a felony murder theory to support a conviction for murder unless it also proved actual malice in connection with the killing itself.

Commonwealth v. Brown, 477 Mass. 805 (2017). The concurring opinion by Judge Gants explained why the felony murder rule was unfair: by focusing only on the defendant's state of mind in relation to the underlying felony, it punished the defendant without proof from the Commonwealth regarding the defendant's intent to commit the murder itself. After Brown, although the Commonwealth could use the underlying felony to support a finding of malice in connection with the killing, the felony murder rule no longer could be used to relieve the Commonwealth of the burden of proving malice as the case law defines it for first and second degree murder. Judge Gants explained the reason why it made sense for this holding to be applied prospectively: the "case might have been tried very differently if the prosecutor had known that liability for murder would need to rest on proof of actual malice. For instance, a prosecutor might have asked for an involuntary manslaughter instruction if he or she had known that the jury could not rest a finding of murder on felony murder liability." 477 Mass. at 834. That reason for prospective application of Brown does not exist in the instant case, however,

Here, the instructions did permit the jury to consider involuntary manslaughter --but only if they were unable to agree to either second degree murder with malice or murder in the commission of a life felony. Moreover, the Commonwealth did try the case knowing that it

would have to prove malice to support a second-degree murder conviction. Significantly, the jury was unable to agree to murder with malice, which would have required them to conclude that defendant intended to kill, intended to cause grievous bodily harm or intended to commit an act which, in the circumstances known to the defendant, a reasonable person would have known created a plain and strong likelihood that death would result. Had they been instructed that this same malice would be required in connection with the felony murder theory, then they very well may have been unable to agree and would have then proceeded to consider involuntary manslaughter.

The Commonwealth emphasizes that Brown is quite clear in its holding that it applies prospectively and that whether a retroactive application of its holding to this case would or would not prejudice the Commonwealth is beside the point. That position may be accurate as a matter of law. It does not, however, prevent this Court from taking into account the fact that the law changed within eighteen months of the jury verdict, particularly in light of how this case was tried. Indeed, the SJC in Brown, exercising its authority under G.L.c. 278 §33E, reduced the verdict there from first degree to second degree murder as a result more consonant with justice, even though the rule it announced did not apply to the defendant before it. This Court considers this factor together with other factors set forth above in determining whether justice has been done in this case.

The Commonwealth's principal opposition to the new trial motion is its contention that this Court lacks the authority to grant the relief requested. This is based not only on its interpretation of Rule 25 but also on its position that the SJC decision affirming the defendant's conviction prevents this Court, as a matter of collateral estoppel, from reaching a different

conclusion on the factors that the defendant cites in arguing that justice was not done. This Court is not persuaded by the Commonwealth's arguments.

Turning first to Rule 25, this Court concludes that the Commonwealth is simply wrong in its assertion (as stated on page 16 of its Opposition) that the Court has no authority to reduce a verdict once the conviction has been affirmed on appeal. The SJC itself has explicitly held to the contrary in Commonwealth v. Gilbert, 447 Mass. 161 (2006). Also, although Gilbert did involve a finding (many years after the trial itself) that the trial judge had erred, the SJC made it clear in its decision that the judge's authority to reduce a verdict under Rule 25(b) has historically not depended on whether there was error in the trial or not.

The details of Gilbert are instructive. The lower court (Gants, J.) was presented with a motion for new trial under Rule 30 some ten years after the defendant's conviction for first degree murder was affirmed on appeal. Concluding that the jury instructions at trial were erroneous, Judge Gants, sua sponte, decided instead to reduce the verdict from first degree to second degree murder pursuant to Rule 25(b)(2).⁶ In affirming that decision, the SJC agreed with Judge Gants (then a Superior Court judge) that there is a substantial overlap between Rule 30 and Rule 25 and that the motion could have been filed under either rule, both of which permit a judge to act where justice may not have been done. The SJC noted that more typically, Rule 25(b)(2) is employed where there is no error in the proceedings themselves, but the trial judge concludes that a different verdict would "rectify a 'disproportionate' verdict" or would be more "consonant with justice." 447 Mass. at 169, citations omitted. In other words, legal error is not a prerequisite in order for a court to reduce a verdict. The SJC went on to reason that if a trial judge has the discretionary authority to reduce a verdict where there is no error, "we see no

⁶ Unlike the instant case, Judge Gants was not the judge who presided over the original trial. That judge had retired.

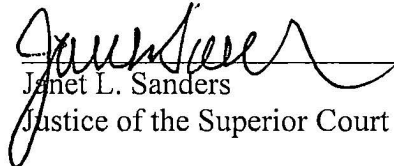
reasoned basis under our rules or otherwise to preclude a similar reduction where an error does not affect the lesser included offense that is supported by the evidence.” Id. The SJC in Gilbert held that Judge Gants’ decision to reduce the verdict rather than order a new trial was not an abuse of the discretion conferred upon him by Rule 25(b).

The SJC in Gilbert also made it clear that there was no time limit within which a motion under Rule 30 or Rule 25 must be brought. Rather, it suggested that the passage of time was appropriately considered in determining whether to reduce the verdict rather than order a new trial. That is precisely what Judge Gants (as the lower court judge) did in opting to proceed under Rule 25(b). He reasoned that to order a new trial would give the defendant an undeserved windfall, given the difficulties of retrying the case after so many years. For the same reasons, this Court, having erred in its jury instructions yet nevertheless concluding that the verdict of murder is not consonant with justice, concludes that reducing the verdict to the lesser included offense of involuntary manslaughter – a verdict which would have been unaffected by the erroneous instructions that were given – is appropriate in this case. Compare Commonwealth v. Sanchez, 485 Mass. 491,501 (2020) (although court had authority to order new trial under Rule 30, it could not reduce verdict under Rule 25(b), where error committed in original trial had same impact on all lesser included offense)s.

The Commonwealth may seek to distinguish Gilbert on the grounds that, in that case, the Commonwealth conceded not only that the jury instructions were erroneous but that this error was prejudicial. Unlike Gilbert, the majority of the SJC in the instant case determined that this Court’s error was not prejudicial nor was there a substantial miscarriage of justice. This holding, it is argued, serves to estop this Court from reaching a different conclusion, even where it is relying on Rule 25. This Court is not persuaded by this argument, however. Collateral estoppel

applies only where the applicable law is identical in both proceedings. See Commonwealth v. Sanchez, 485 Mass. 491 at 501. Here the analysis this Court conducts under Rule 25 (as well as Rule 30) is entirely different from the analysis that an appellate court conducts in determining whether there is an error of law requiring reversal. For example, I am not viewing the evidence in the light most favorable to the Commonwealth. And I am permitted to consider information and materials beyond those presented to the jury. In short, this Court is conducting the review that the SJC conducts in capital cases pursuant to G.L.c. 278 §33E – a review that was not conducted by the SJC here.

For all the foregoing reasons and for other reasons articulated in the defendant's Memoranda, this Court concluded that the defendant's verdict for second degree murder must be reduced to involuntary manslaughter. This Court schedules this matter for a status conference on a date in December 2021 that is mutually convenient to the parties.


Janet L. Sanders
Justice of the Superior Court

Dated: November 29, 2021

Certificate of Compliance

I hereby certify that this application complies with rules 11 and 20 of the Massachusetts Rules of Appellate Procedure. The application is set in 14-point Athelas and the argument section contains 1,329 words, as determined through use of the “Word Count” feature in Microsoft Word for Office 365.

/s/ Patrick Levin

Patrick Levin

Certificate of Service

I hereby certify that I have today served Melissa Pfeiffer’s Application for Direct Appellate Review on the Commonwealth by directing a copy through the electronic filing service provider to:

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September 23, 2022